



POLICE DEPARTMENT

*The
City of
New York*

March 1, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Clifford Rigaud
Tax Registry No. 931923
Housing Police Service Area 6/VIPER 1
Disciplinary Case Nos. 2010-0509 & 2011-4170

The above-named member of the Department appeared before me on April 12, May 4, July 13, August 3, September 28, October 5, October 19, November 23, and December 6, 2012, charged with the following:

Disciplinary Case No. 2010-0509

1. Said Police Officer Clifford Rigaud, while assigned to the 103rd Precinct, on or about April 27, 2009, while on-duty, while inside the 103 Precinct roll call office, wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department when he was discourteous to the personnel assigned to the roll call office, to wit: said Officer became agitated and began yelling profanities at Police Officer Theresa Callahan, tax# 939453, and ignored initial attempts to calm him down.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT GENERAL REGULATIONS

2. Said Police Officer Clifford Rigaud, while assigned as indicated in Specification #1, on or about February 2, 2010, while on-duty, within the confines of the 103rd Precinct, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department when he was discourteous to a New York City Lieutenant, to wit: said Officer approached Lieutenant Jason Margolis, tax# 918540, and started yelling at him over his assignment.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT GENERAL REGULATIONS

3. Said Police Officer Clifford Rigaud, while assigned as indicated in Specification #1, on or about April 15, 2009, while on-duty, at One Police Plaza, was observed to be inattentive and texting on his personal cellular telephone.

P.G. 206-03, Page 1, Paragraph 21 VIOLATIONS SUBJECT TO COMMAND DISCIPLINES

Disciplinary Case No. 2011-4170

1. Said Police Officer Charles [sic] Rigaud, while on duty and assigned to the 103rd Precinct, did fail to comply with an order in that Sergeant Peter Mikulus informed him of his assignment and Police Officer Rigaud refused to report to his assignment.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

2. Said Police Officer Charles [sic] Rigaud, while on duty and assigned to the 103rd Precinct, was discourteous to Deputy Inspector Charles McEvoy, to wit: said Police Officer called him by his first name and called him a racist.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

The Department was represented by Rita Bieniewicz, Esq. and Vivian Joo, Esq. Department Advocate's Office and Respondent was represented by Stephen Drummond, Esq. of Drummond & Squillace, PLLC.

Respondent through his counsel entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-0509

Respondent is found Guilty with regard to all specifications.

Disciplinary Case No. 2011-4170

Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Deputy Inspector Charles McEvoy; Lieutenants Jason Margolis, Christopher Garcia, and William Church; Sergeants Donald Kipp, Peter Mikulus, Stephanie McClinton-Young, and Eduardo Pena; Police Officers Rachael Schneider, Gino Mencaroni, Andrew Wilson, and Theresa Callahan; Principal Administrative Associate Regina Bryant; and Police Administrative Aide Angela Douglas as witnesses.

Sergeant Donald Kipp

Kipp is a 19-year member of the Department. He has been assigned to the 103 Precinct for the past four years and had occasion to work with Respondent.

On October 30, 2010, Kipp was assigned to cover the "day tour desk" as Desk Officer. Kipp believed Respondent was working a 7:05 a.m. to 3:40 p.m. tour and had been assigned to SP-10 at roll call, which occurred at 7:15 a.m.

Kipp further explained that SP-10 officers do normal patrol but they handle past crimes and non-emergency crimes. He said there was nothing punitive or negative about this assignment.

Kipp further testified that at about 9:00 a.m., Respondent's partner, Alexander came to the desk and reported that Respondent had never come out of the stationhouse to

go on patrol. Kipp said he tried to call Respondent on the Department radio but Respondent did not answer. He then sent an officer downstairs to the lounge and determined that that was where Respondent was. He then had Respondent report to him at the desk.

Kipp stated that when he asked Respondent where he had been since 7:30 a.m., Respondent told him that he had been in the lounge waiting for a new partner and that Sergeant Mikulus had authorized him to do so. Kipp said that he had Mikulus call in and Mikulus told him that he never gave Respondent permission to go downstairs or to switch assignments.

Kipp stated that he then told Respondent to go on patrol and that he would be giving him a command discipline (CD). Respondent, he said, became upset, throwing his hand up in the air, and left. He presumed that Respondent had gone on patrol.

Kipp indicated that at the time Mikulus had only been at the precinct a week or so and Kipp had never worked with him before and did not know him well. Kipp said he did know Respondent who had been at the command for several years and that he had not had problems with him in the past.

Kipp stated that he reviewed the Interrupted Patrol Log in connection with this incident. He explained that the log is kept at the desk to record interruptions in patrol. He did not recall Respondent providing him with any reason for not wanting to work with Alexander.

On cross-examination, Kipp indicated that on that date he was the desk officer and Mikulus was the patrol supervisor. He had not worked with Mikulus much prior to that date, and either he or Mikulus could have changed the roll call but would have to

notify the other. Kipp was not present at roll call and did not hear Mikulus assign Respondent to SP-10. He agreed that officers ask for changes of assignment. He agreed that when Respondent was called to the desk he came, that he answered his question about why he was in the lounge and that he went on patrol when directed by Kipp.

Kipp agreed that at his official Department interview he had said that Respondent had "stormed out the door" but that he had not mentioned Respondent having thrown his hands up in the air at that time.

Kipp issued Respondent a CD [Respondent's Exhibit (RX) A] over this matter. He said that in doing this he did not rely solely on Mikulus' statements but that Respondent admitted that he had been in the lounge waiting and that "He should have came to the desk and been put into the Interrupted Patrol Log." Kipp stated that the CD was for not being in the Interrupted Patrol Log and that Respondent accepted the CD.¹

Kipp agreed that he had signed the CD and, at the time, he had written that Respondent was in violation of Patrol Guide Procedure 202-21 paragraph 2 by his failure to proceed to his assignment as directed by a supervisor after roll call was conducted. Kipp was again asked if he had relied on the word of Mikulus who he only knew for a short time and Kipp responded that he did not and that the CD had been issued because Respondent did not have a viable reason.

Kipp agreed that he had been told by Respondent that he was waiting for a partner to be assigned by Mikulus and that that was why he (Kipp) had called Mikulus. Kipp stated that Mikulus had said that Respondent had a partner and he was waiting for him outside.

¹ This is apparently incorrect. The CD is in evidence (RX A). It does not charge an Interrupted Patrol Log violation but a failure to go to his assignment. The CD is not signed and Respondent testified that he did not accept it.

Kipp agreed that if Mikulus had told him that he had told Respondent to wait for a partner there would have been no CD and thus he agreed that he did rely on what Mikulus had said in issuing the CD.

Kipp believed that Alexander was assigned to her duties on the roll call with Respondent. He agreed that ordinarily two officers working together would be assigned to one patrol car (RMP). He did not know which RMP had been assigned to Alexander. When he had tried to call Respondent on the radio he tried to call the SP-10 car. He did not know if Mikulus had given the RMP keys to Respondent. He did not know if they had two RMPs. He did not know if RMP 2683 was assigned to Respondent that day. He did not know how many times the roll call had been changed that day or if it was changed at all. He did not know if Respondent had initially been assigned as the telephone switchboard (TS) operator nor did he know if Respondent had been assigned to Jamaica Hospital or if these assignments had been made and changed. He did not know of Alexander having been assigned to anything but SP-10.

On re-direct examination, Kipp indicated that when Respondent came to the desk he had stated that he did not work with Alexander anymore. On re-cross examination, Kipp agreed that Respondent said he was waiting in the lounge because Mikulus told him to.

Police Officer Rachael Schneider

Schneider has been a police officer for about four and a half years and has been at the 103 Precinct for about four years. On February 2, 2010, she was assigned as the TS Operator. She believed the sergeant on duty that day was McClinton-Young. She said

she knows Respondent, who had worked at the command the entire time she had been there, which at that point was a little over two years.

Respondent, she said, approached the TS area to speak with Margolis who she believed was the Platoon Commander that day. Margolis was sitting about two or three feet behind her and may have been covering the desk. Respondent wanted to discuss his assignment for the day. She heard Respondent question why he was assigned the SP-10 car again. Schneider said that she has had that assignment herself and while it is not punishment, it usually is assigned to the officers lowest in seniority. She described Respondent as "confrontational" in that he seemed to be demanding an answer:

Well, [Respondent] was asking why he kept he was telling Lieutenant Margolis that he shouldn't have been doing the roll call because of his duty status at that time, and Lieutenant Margolis kept repeating that he was Platoon Commander and he had every right to do roll calls.

She said she "thinks" they went back and forth. She stated that eventually Respondent left the command and on his way out he yelled back, she believed to Margolis, that "at least they have their guns in Haiti." Schneider testified that Margolis did not have his guns at that time because he was on either modified or restricted duty. Schneider described Margolis as "professional" and was handling it well "considering." When asked to explain what she meant she said, "Considering, you know, he was he was on restricted or modified status and, you know, an officer of a lower rank was confronting him in front of pretty much the day tour officers that were coming out."

Schneider could not say exactly how many people were there during this interaction, which took place probably between 7:30 and 8:00 a.m. She did not believe

Margolis was discourteous. Nor did she believe he was raising his voice or yelling. She does not have a personal relationship with either Margolis or Respondent.

On cross-examination, Schneider agreed that she is Facebook friends with Margolis. She did not put information about what she did every day on Facebook. She did not recall when she and Margolis became Facebook friends and she was not aware of any rule in the Patrol Guide prohibiting officers from becoming Facebook friends. She further stated that she is Facebook friends with numerous sergeants and lieutenants that work in her command. There has been no issue as far as the integrity control officer (ICO) is concerned.

Schneider agreed that she is not Facebook friends with Respondent, that she had not sought to become his Facebook friend and had no interest in becoming his Facebook friend.

She agreed that the SP-10 assignment is considered a “rookie assignment” and usually given to junior officers as opposed to senior officers working at the time. She explained that if a senior officer were partnered with a junior officer, the senior officer might get “tagged” for a junior assignment.

If she were a senior officer and she learned that two junior officers were not given the SP-10 assignment she would be concerned, but, she stated, she would have addressed it in a different manner. On February 2, 2010, she was junior to Respondent.

Schneider agreed that she had said that Margolis was very professional and respectful when Respondent approached him about the SP-10 assignment. She stated, “I remember the demeanor because it caught me off guard that an officer would approach

the desk and begin to question the lieutenant in front of other police officers and desk officers that were at the desk at the time.”

She did not recall exactly what Margolis said pointing out that it was two and a half years ago. It sounded familiar to her that Respondent had asked to speak to Margolis in private and that Margolis had said that whatever he had to say could be said there. It was possible that Margolis had said that.

She agreed that Margolis had said something along the lines of the fact that he was the Platoon Commander and that he (Margolis) could do what he wanted. Reminded that she had testified that Margolis had behaved in a professional manner, Schneider stated that “considering the circumstances” she believed he had been professional.

Schneider learned that Respondent was Haitian after the incident. She did not recall if she had been at the roll call on January 17, 2010. She recalled that at some point Margolis had noted that the Department was looking for people to go to Haiti as part of an ESU (Emergency Services Unit) “type of thing.”

When asked if she recalled Margolis say, “Watch out for those Haitians because, you know, they shoot each other,” Schneider responded, “That was not what he said at all.” Regarding whether Margolis had said something about officers going to Haiti with firearms “because the Haitian people shoot people,” Schneider responded, “No sir. At that point there was a lot of rioting going on in Haiti after the tragedy. He said he personally wouldn’t go down there without a firearm...”

Schneider agreed that on direct examination she had said that as Respondent walked away he said something like, “At least Haitians have guns.”

Schneider did not recall Respondent, in the incident at the desk, tell Margolis that he did not appreciate what Margolis had said about the Haitian people. She did remember Margolis telling Respondent that if he had a problem he should go to EEO (Office of Equal Employment Opportunity) with it. She did not recall if that was in response to a remark Margolis had made about the Haitian people. Schneider said:

No. It stuck out because he's—to my knowledge, made several EEOs [complaints] against Lieutenant Margolis, so when Lieutenant Margolis recommends to do it again, it stands out.

She did not know when she first learned of Respondent's EEO complaints against Margolis and believed she learned about it from Respondent or other officers, prior to the February 2, 2010, incident. At the time of the incident, Schneider knew that Margolis had either turned in his firearms or had them taken away by the Department. She assumed that Respondent's remark, which was made as he exited the stationhouse door, had been addressed to Margolis.

Sergeant Peter Mikulus

Mikulus is a nine-year member of the Department currently assigned to the Patrol Services Bureau. Prior to that he had been assigned to the 103 Precinct where he started on October 11, 2010. On October 30, 2010, he was the day tour Patrol Supervisor and he conducted roll call at about 7:15 a.m. and handed out the assignments. Respondent was assigned to a sector along with his partner Alexander. After he gave out the assignments everyone dispersed.

After he conducted roll call in the muster room, he went to the desk to get his paperwork so that he could go outside. Shortly after he had given out the assignments

Respondent, he said, approached him and stated that he (Respondent) did not work with Alexander. Mikulus described Respondent's tone as "abrupt." He said Respondent's words were, "I do not work with this officer." Mikulus testified, "I had looked at the roll call. We were short manpower and everybody was paired up, so I told him at the time, I said, you know, you have to work with Police Officer Alexander."

Mikulus stated that he had only worked in the precinct for about two weeks at that time and that he did not know anyone there from prior commands and he did not have any personal friends there nor had he had any conflicts with anyone there. He had not given out discipline to anyone at that time. He did not know Respondent prior to this time and believed this was his first time working with him.

Mikulus testified that he told Respondent that there was no manpower, that everyone was paired up and that he was to proceed on patrol with Alexander. He said there was no confusion about this. Mikulus stated that he (Mikulus) then went out on patrol.

Mikulus testified that he never told Respondent that he could sit in the lounge and wait until he found a partner for him. He gave him no instruction other than that he was to go out on patrol.

Mikulus further testified that at some point in time he was called back to the command. The desk sergeant, Kipp, asked him if he knew where Respondent was. He told Kipp that Respondent was supposed to be out on patrol. He said Respondent's partner was outside waiting for him.

Another officer was sent to look for Respondent and he (Respondent) came upstairs from the lounge where, he said, he had been waiting. Respondent said that he

(Mikulus) told him he could wait in the lounge, which Mikulus said he did not do.

Respondent then proceeded to go out with Alexander. At this point, Mikulus said, he had not known or worked with Alexander before. Nor had he had any run-ins with her. He did not have a close relationship with Kipp then or now. He does not work with him now.

On cross-examination, Mikulus stated that he first learned that he had to appear to testify about two weeks ago from the Department Advocate's Office. He did not speak to anyone other than the members of the Department Advocate's Office about his testimony. He did not discuss his testimony with Margolis. He acknowledged speaking with Margolis today but indicated that he did not discuss his testimony.

Mikulus agreed that he had said that he gave out the assignments on the date in question. He did not know if Kipp also had the capacity to change assignments. As he and Kipp were both sergeants, they did not overrule each other. They would not have changed assignments unless they discussed it. He agreed that if two officers were working together they would have one RMP. He did not recall which RMP was assigned to Respondent or to Alexander that tour. He did not recall at first giving Alexander the assignment of station house security or an assignment to go to Jamaica Hospital. He did not recall Respondent at first being assigned as TS operator or giving Respondent an assignment at Jamaica Hospital. He did recall giving Respondent the SP-10 assignment.

He said that being a new sergeant at the time he did not know if it was unusual for officers to come to him and have conversations about assignments they were given. He recalled Respondent coming up to him. He denied that Respondent came up to him and

asked if it was all right if he changed his assignment. He reaffirmed that Respondent was abrupt.

Mikulus stated that Respondent did not ask him to accommodate him. Mikulus stated that Respondent said, "I do not work with Police Officer Alexander," however he acknowledged that this was not a request for an accommodation. He said he then checked the roll call. This all occurred at the desk. Mikulus agreed that Respondent never said he was not going to follow his orders.

He agreed that there came a time when he and Kipp were present and Respondent came up from the lounge. Mikulus said the Respondent did not say that he was waiting for him to accommodate him. According to Mikulus, what Respondent said was that he (Mikulus) had told him to wait in the lounge. While someone else made the determination that Respondent had disobeyed his orders, Mikulus agreed that Respondent had disobeyed his orders. Mikulus did not suspend Respondent for disobeying his orders nor did he issue a CD; he took no action.

He did not know where Alexander was during this time. He agreed that after the interaction Respondent went out to work with Alexander.

Mikulus agreed that everyone (at roll call) was paired up and that he determined not to "un-pair" anyone. He did not recall if he had other officers from the second platoon that were then working that tour. He did not recall if Sergeant Black, or Police Officers Bar or Ng from the third platoon were at roll call, or if there was a Police Officer Lovette from the second platoon. Mikulus stated that he gave Respondent one assignment at roll call. He did not change anything and did not recall if he made any changes to the Roll Call Log. After looking at the log, he said it did not really refresh his

memory. There were changes made, but they were not in his handwriting. He said the changes on the log could have been made at anytime. The document did not refresh his recollection as to when or who made the changes.

On re-direct examination, Mikulus agreed that before testifying he had looked over the transcript of his official Department interview. He indicated that if he knew that Respondent was going to go to the lounge he would not have allowed him to do that. Regarding the Roll Call Log, Mikulus stated that "a lot of times changes are done before and they're done after."

On re-cross examination, Mikulus indicated that he did not mention having reviewed the transcript of his official Department interview because he misinterpreted the question. He agreed that he came to the determination that Respondent had disobeyed his order when he (Mikulus) was with Kipp and Respondent had stated to them that he was in the lounge because he was told to wait there by Mikulus. To this day, Mikulus has not written him up, suspended him, or reprimanded him verbally, nor prepared any document stating that Respondent had disobeyed an order.

Deputy Inspector Charles McEvoy

McEvoy is a 23-year member of the Department who has been the Commanding Officer of the 103 Precinct since September 30, 2009. He knows Respondent, who had been a police officer in the precinct since prior to his arrival. On January 30, 2011, at about 3:30 p.m. McEvoy spoke with Respondent in his office to adjudicate a CD that had been issued regarding an assignment that he did not complete in an expeditious manner. Police Officer Mencaroni, the union delegate and acting in that capacity, was also there.

McEvoy testified that he explained his findings to Respondent and Mencaroni and told them that he had substantiated the CD. McEvoy testified:

When he had first – initially had his opportunity to speak about the command discipline, he had addressed me by my first name, Charles...I immediately responded, "excuse me." And at which time he again addressed me by my first name, Charles, and I immediately responded, "are you speaking to me?" And [Respondent] had stated right afterwards, you called me by my first name, I am going to call you by your first name. And then at that point I said, wait a minute, it doesn't work that way. You are to address me as sir or Inspector, nothing else. And I will address you any way I feel appropriate, other than in a derogatory manner.

McEvoy denied jumping out of his chair when this occurred. He said he never allows subordinates to routinely call him by his first name. After the conversation, Respondent and Mencaroni left the office and returned about ten or 15 minutes later. McEvoy said that he told them that he was going to take one vacation day to adjudicate the CD. Respondent responded by saying that he (McEvoy) had initially stated two hours. McEvoy then informed him that he was issuing another CD for addressing him in a discourteous manner. At that time, Respondent told McEvoy, "You are a racist individual. Since you've been – since you've been assigned here this whole command is miserable." After that, Mencaroni guided Respondent, by force, out of the office.

McEvoy said he did not react to Respondent's comment that he was racist. He said he was taken aback in that he had never been addressed like that in his entire career with the Department. Respondent, he said, was placed on modified assignment after that.

On cross-examination, McEvoy agreed that January 28, 2010, was the third time Respondent came to his office on that CD. He agreed that it would be fair to say that the first time Respondent came to his office he called him "Cliff." He could not say with

certainty if Respondent asked to be called "Police Officer" and that it was possible that had occurred.

McEvoy agreed that at the second meeting he called Respondent "Cliff" but he could not recall if Respondent asked to be called "Police Officer Rigaud." McEvoy agreed that at the third meeting he referred to Respondent as "Cliff" before Respondent called him "Charles." McEvoy did not believe he was being derogatory toward Respondent. McEvoy agreed that Respondent came into the office in his official capacity as a police officer. McEvoy agreed he probably never referred to him as "Police Officer" and that he probably called him "Cliff."

McEvoy agreed that there were only three people in the room at the time Respondent called him "Charles" and that he did the investigation even though he was the person who was the subject of the courtesy. McEvoy, while conducting the investigation, did not speak to Mencaroni, who was interviewed by the Borough Investigations Unit.

McEvoy testified that no one ever asked him if he had jumped out of his chair nor did he know if Mencaroni had ever been asked that question. McEvoy could not definitely say if he had recommended a different penalty for the CD at an earlier time because, he said, this was the third time he was attempting to adjudicate that particular CD. He said that he did not intend to file a charge for courtesy but was going to issue another CD.

McEvoy testified that he was surprised when Respondent addressed him by his first name and felt disrespected. He did not believe that addressing Respondent as "Cliff" was disrespectful at all.

McEvoy did not recall if Lieutenant Seegers was present at previous meetings with Respondent. He agreed that not only did Respondent call him a racist but told him that since he had been there the command had been miserable.

McEvoy agreed that prior to January 28, 2011, Respondent had been in his office but he did not recall with certainty that he called him "Cliff" but he most likely did. During the January 28 meeting, Respondent had come to his office to adjudicate CD. Respondent had not tried to explain that he had had conversations with Kipp and Mikulus. McEvoy explained that Respondent had done that previously and, as a result, McEvoy did some further investigation in that he had spoken to Kipp and Mikulus. He did not recall discussing with them how many vehicles had been assigned nor did he inquire as to how many keys had been given out noting that "it did not come up" in the discussions.

McEvoy indicated that Respondent had denied that he was guilty of the charge in the CD and that was why the matter had been adjourned on two occasions. McEvoy indicated that he had come to the conclusion as to the punishment (one vacation day) in his office on January 28, 2011.

McEvoy said he absolutely did not ask Mencaroni if he (McEvoy himself) had jumped out of his chair towards Respondent that day.

On re-direct examination, McEvoy stated that he had no intention of being disrespectful to Respondent when he addressed him by his first name. He said he rarely refers to subordinates in any other way.

On re-cross examination, McEvoy stated that, if a subordinate let him know that he would prefer not to be referred to by his first name, "I most likely would refrain from

that.” He reasserted that he did not recall Respondent making that representation to him. McEvoy also stated that he does not allow any subordinate, including Margolis to call him by his first name.

Lieutenant Jason Margolis

Margolis has been with the Department for over 16 years and has been in the 103 Precinct for about 7 years. On February 2, 2010, at about 7:40 a.m., he was assigned as the commander of the second platoon and was near the front desk facing away from it while he worked on a computer. All of a sudden, he heard somebody say “is it true that the commanding officer said senior people have to be in the SP-10 auto.” When he realized the comment was directed at him he turned around and saw Respondent asking that question “in a very loud, aggressive manner, disrespectful manner.” Margolis said Respondent was about ten feet away at that time.

Margolis said he responded by saying that Respondent could ask the commanding officer but that he was the platoon commander and that he made personnel decisions on the second platoon.

Respondent, he said, asked the question again and then stated “but you don’t even go out in the street.” Margolis stated that he believed this was a reference to the fact that he (Margolis) was on restricted duty at the time and did not have a weapon.

Margolis said he again told Respondent that he made the personnel decisions and that he, Respondent, needed to go out to his post.

Margolis said Respondent also stated he did not like a comment he attributed to Margolis about “crazy Haitians and guns” that was purportedly made a day earlier.

Margolis said that he told Respondent he had no idea what Respondent was talking about and that if he thought he had made a derogatory statement he should file an EEO complaint. Margolis said there were about 20 people in the vicinity who could have witnessed the incident. Respondent finally left and took his post. Margolis denied ever making derogatory remarks about Haitians. Margolis also said that he spoke to Respondent in a "calm, level tone."

Margolis explained that while sectors cars respond to jobs in progress, the SP-10 auto responds to jobs that have occurred in the past. Margolis explained why Respondent was assigned to SP-10:

[H]e and his partner did a good job working in a regular sector and they didn't respond timely. They didn't listen to the radio. And it was a way to get them to -- it's an assignment that's used to teach people patrol. And when you start mastering that, moving on to the to regular sector work. And since they weren't up to speed for regular we will put them in the SP-10 auto.

Margolis stated that the SP-10 assignment was not punishment. Margolis issued Respondent a CD for the discourteous remark Respondent had made.

On cross-examination, Margolis indicated that before testifying he had, a couple of weeks earlier, reviewed his official Department interview notes and had been to Police Headquarters several times in preparation for his testimony. He had been Respondent's platoon commander going back to 2006/2007. Margolis had no knowledge of Respondent having filed a complaint against him "back then" alleging discrimination because Respondent is Muslim.

Margolis denied that he had a disagreeable relationship with Respondent at that time. He also would not say that he did not like Respondent. He said he did not think

about Respondent and did not recall Respondent approaching him about a statement he allegedly made about Palestinians.

Margolis said that he was assigned to Operation Impact for part of 2009, so he did not recall if he had been Respondent's platoon commander during 2009. On questioning by the Court he said he was an Impact lieutenant for a year and during that time he was not Respondent's platoon commander. After reviewing an evaluation for Respondent for the year 2009 that Margolis prepared (RX C), Margolis agreed that he did do an evaluation for Respondent that year. He agreed that Sergeant McClinton-Young would have been Respondent's squad sergeant in 2009 but noted that the Platoon Commander was a higher rank and he had been the Platoon Commander. He also clarified that when he worked in Impact, he was assigned to the 103 Precinct and turned out from there. During that period, he was not Respondent's direct supervisor but they responded to the same jobs and in his role as a lieutenant he was Respondent's supervisor during that period of time. He agreed that he was not Respondent's direct supervisor at that time.

Margolis stated that McClinton-Young prepared an evaluation and he as Platoon Commander reviewed it. He said that it was not fair to assume that Respondent's evaluation was the only one he changed.

Margolis denied ever pointing a weapon at another police officer, specifically Police Officer Joe Vzonik.

Margolis denied that he had testified earlier that Respondent had come to him on February 2, 2010, to ask a question. He asserted that Respondent came to the desk yelling at him. Margolis agreed that he was about ten feet away, that there were about 20 other people in the area, and that there was a lot of noise in the area. Margolis said that

he told Respondent, "Officer, you need to go to your post." (Margolis demonstrated the tone of his voice at the time.) He said the room was silent at that point in time.

Margolis agreed that Respondent said he wanted to discuss the SP-10 assignment, and had complained about the assignment being given to an officer of his rank and stature. Margolis agreed that officers sometimes go to supervisors after roll call to discuss their assignments. He did not agree that the SP-10 assignment was looked down on.

Margolis agreed that Schneider was at the TS that day and that she was junior to Respondent. He stated that he did not make assignments based on seniority, stating: "I do it because who's the most efficient, best officers I have." However, he agreed that seniority sometimes comes into play. He agreed that Respondent asked about seniority in making the SP-10 assignment but that he did so in a "loud discourteous manner."

Margolis said that he told Respondent that he made the decisions on the platoon and that as a lieutenant he did not have to explain himself to an officer. He also told Respondent he could see the commanding officer.

Margolis said he was not aware if Respondent had filed a complaint against him prior to February 2, 2010.

He said he would have conducted the roll call on January 17, 2010, if he was working that day. He did not recall if Schneider was there. During the February 2, 2010, incident he recalled Respondent saying he did not appreciate the remarks Margolis had made about Haiti. Respondent left the area and walked out to the vestibule and Margolis

did not know what he did after that. Margolis did not think he did the 2009 evaluation after the February 2, 2010, incident.²

Margolis agreed that McClinton-Young was present at the time of the February 2, 2010, incident as well as Officers Wilson and Callahan. He believed Sergeant Pena was also there.

Margolis testified that it was not just that Respondent was loud when he spoke to him but it was the “tone” that he used, he added:

[T]he attitude he had, the look on his face when I turned around and saw him. He was not just asking a question. If he wanted to ask the question he could have come up and said, Lieu, can I come behind the desk and talk to you about something. That’s not what occurred.

He was not punishing Respondent or Alexander with the SP-10 assignment. Margolis denied making sexual advances to Alexander prior to February 2, 2010.

Margolis said he was not aware of any complaints filed by Respondent against him regarding him placing Respondent on dangerous posts.

Margolis said that he remembered Respondent from when he worked with him in 2006. Margolis denied having bad-relationship issues with Respondent then but added that he did not think he did a very good job as an officer but that there was nothing personal on his end about the relationship. This view of Respondent’s performance has existed for “the whole time that [Margolis has] dealt with him.”

Margolis denied saying on direct examination that he had assigned Respondent and Alexander to SP-10 to increase their activity numbers. He said he assigned them because:

They did not listen to the radio. They didn’t handle jobs in a timely manner. Their paperwork was sloppy and filled with mistakes. I often

² Whereupon Counsel for Respondent represented that it was done in March 2010, after the incident.

got complaints from people in the community about how they interacted with them and yes, they did have terrible activity.

Lieutenant Christopher Garcia

Garcia has been with the Department for about 19 years and is currently assigned to the 101 Precinct. On April 27, 2009, he was 103 Precinct Operations Coordinator. At about 11:30 a.m. that day, he was in his office when Respondent came in questioning why he had to go to an assignment at One Police Plaza two days in a row. He said Respondent seemed annoyed and bothered. Garcia noted that at that time Lieutenant Seegers, who was then the second platoon commander, did the scheduling of assignments to One Police Plaza. Garcia told Respondent he did not know the reason for the assignment and advised Respondent to reach out to Seegers, adding that he was sure there was a reasonable explanation.

When asked what Respondent's response was when he told him to talk to Seegers, Garcia testified:

I mean, you know, he kind of heard me, but he was saying things like, you know, I have a partner, you know, I should be doing details, this isn't right. He was kind of a little upset. Like I said, I was trying to give him – I was doing other things. I was trying to give him reasonable advice. Just reach out to Lieutenant Seegers. I'm sure we can find a reasonable solution to you, you know, whatever the problem is.

Garcia explained that the One Police Plaza details are given to a command for a month. For that month the command has to provide coverage, then the next month the responsibility to provide officers would go to another precinct. He said the assignments to the details are not punishment. He said the details involve extended tours which some people like and others do not. He noted that it involved overtime.

After Garcia told Respondent to reach out to Seegers, Respondent left his office. A few minutes later, Garcia heard a “little commotion” and yelling. He went to the hallway and “sure enough there was a commotion.” He said that he heard yelling, “a little banging” and he noted that obviously it was abnormal. Garcia “followed the sound” which was coming from the roll call office “at least 100 feet” away. Garcia got to the roll call office and he testified:

It was a frantic scene. By that I mean [Respondent] was very upset. He was boisterous. He was kind of yelling and being demonstrative. And he was saying, you know – you know, I’m sick and tired of this. He was cursing. I’m sick and tired of this shit. ... He was pretty upset. You know, I’m tired of this. You guys are always messing with me. I’m sick and tired of this shit. He was really kind of upset.

Garcia testified that he believed the roll call staff, Callahan, PAA Angela Douglas and PrAA Regina Bryant, were in the room but he was not sure.

Garcia further described the situation:

Well, I mean obviously, that’s not, you know, normal behavior. We don’t encounter those kinds of things. People get assigned to stuff all the time and not everybody is always pleased or happy with their assignment for the day, but we go about it in a more professional manner. So, you know, to have somebody screaming, yelling and banging on stuff and cursing and swearing saying, I’m sick and tired of this, its way out of character for what we did. I mean, I couldn’t believe it to be honest.

Like I said, I literally talked to him for a minute or two. I thought I gave him sound advice to handle the matter reasonably. So when I heard the commotion and him going off like that, you know, I had to I couldn’t believe it. So, you know, I pretty much came in the room and I had to challenge him. I was like – I had to be boisterous. I was the administrative lieutenant. I was like, you know, are you kidding me, are you kidding me. You know, stuff like have you lost your mind, you know. I mean, it was – it was not a common scene.

I meant, the best way I can say it is at that point in time he really lost his cool. And like I said, he was being demonstrative and he was boisterous. You know, he was cursing and swearing. And you know,

I'm no small presence. I have a big voice. I have a big presence. And, I mean, I probably repeated, are you kidding me or something along those lines four or five times before he kind of, like, acknowledged and was like, oh, you know, it came through because, obviously it was not a normal scene. And so I'd say it probably took about 15 to 20 seconds to snap out of it.

When Respondent calmed down a bit, Garcia told him to go to the ICO's office. Garcia said Respondent complied "once he got through to him" and "when he understood what I was saying." He said the roll call personnel were "upset" and "frazzled" and that he was trying to restore calm and a normal workplace. A short time later, he went to the ICO's office. The ICO, Lieutenant King was there and Garcia noted that Respondent seemed "a little remorseful that things got that bad."

On cross-examination, Garcia agreed that when Respondent first came to him there was nothing disrespectful about his behavior however he was "displeased" about getting the detail two days in a row. Garcia said that at that time he was busy with other things and that he had directed Respondent to Seegers, who was in charge of such things. He said what he originally heard was a commotion but he did not recognize an individual's voice. When he got to the office, Garcia observed Respondent "yelling and cursing." While Garcia had heard noise like someone banging on a closet or on a desk, he did not see Respondent do that. He said that the yelling did not seem to be directed at any one person but at those in the office. He said Respondent was upset with the roll call staff. He did not believe Respondent's conduct was directed only at Callahan.

Sergeant Stephanie McClinton-Young

McClinton-Young is a 13-year member of the Department who is currently assigned to the Employee Management Division. On February 2, 2010, she was the 103

Precinct Desk Officer, when, at about 7:40 a.m., while at the desk, she heard Respondent yelling at Margolis about his assignment from the other side of the desk. Margolis was behind the desk working at a computer between five and ten feet from her. While she could not recall what Margolis said she did recall that his tone of voice was "calm," whereas Respondent's tone of voice was "loud." The incident ended with Respondent walking away.

On cross-examination, McClinton-Young said that she did not remember verbatim what Respondent said but she knew that he was upset about the assignment. She believed the SP-10 assignment is more often given to rookies. When asked if it was a slap in the face to give SP-10 to a senior officer, McClinton-Young said that SP-10 would not be given to a senior officer unless there was a shortage of personnel on patrol. She did not remember how many sector cars the 103 Precinct had that day, nor how many officers were there that day. She agreed that Respondent was a senior officer on the second platoon. McClinton-Young did not recall seeing Schneider that day but agreed that she was junior to Respondent.

McClinton-Young agreed that she was Respondent's direct supervisor during the period of December 16, 2008, to December 15, 2009. She said that Margolis was not his direct supervisor for that whole time frame. She agreed that Margolis had directed her to reduce some of the high ratings she had given him on his 2009 performance evaluation prepared by McClinton-Young (RX B). She said she told Margolis that Respondent deserved what he got on the evaluation and that she was not going to change it. She said:

[I]f you're going to drop someone's evaluation you have to note that and you have to note why you're changing those evaluations. You just can't give someone a 5.0 and then next time you give them a 3.0. If that officer was problem to you then you were supposed to address

those problems and speak to him about that. I wasn't going to change his evaluation because as far as I was concerned him directing me what he did he was supposed to do.

She did not remember what she wrote in the evaluation verbatim but she knew that she had given him a good evaluation.

Sergeant Eduardo Pena

Pena has been with the Department for 11 years and is currently assigned to the Internal Affairs Bureau. On February 2, 2010, he was the 103 Patrol Supervisor. At about 7:40 a.m., he was behind the desk, near the Desk Officer, McClinton-Young. He said Respondent asked him for the RMP keys, which were not yet available.

Pena testified that Respondent then walked in front of the desk to Margolis and asked him when it was that the commanding officer wanted senior people in the SP-10 auto. Margolis, who was working at a computer, about eight feet from Pena, told Respondent that he was a lieutenant and could pretty much do what he wanted. Pena said Margolis' tone of voice was calm. He described Respondent as "loud and kind of combative."

Pena testified that Respondent's reply to Margolis was to comment about something Margolis had said about Haiti. Margolis then told Respondent that if he felt that way he could make an OEEO complaint. Respondent then said, "at least Haitians have guns," and walked away.

On cross-examination, Pena agreed that he was a Facebook friend of Margolis possibly for over two years. He agreed that the location where this occurred, behind the desk, is a noisy place. He was not aware of any effort by Respondent to get Margolis' attention. He did not agree that the SP-10 assignment is for more junior officers and

denied that the SP-10 assignment was given to Respondent to pick on him. He agreed that officers can question their assignments without being disrespectful. He agreed that Margolis' response was a way of blowing off Respondent's concern.

Pena was aware that Respondent is Haitian but was not aware that during that time period Respondent [REDACTED].³

Pena never heard Margolis refer to Respondent as a problem child prior to February 2, 2010. He did not recall who did the roll call that day nor did he not know if Margolis had changed Respondent's assignment.

Principal Administrative Associate Regina Bryant

Bryant has been with the Department for 25 years and is currently assigned to the 115 Precinct. She previously worked at the 103 Precinct for 22 years. On April 27, 2009, she worked in the roll call office with Callahan and Douglas.

Bryant explained that when the roll call staff was given the One Police Plaza detail they would give the lieutenant a calendar and then he would designate on that calendar the officers to be assigned to the detail. She said it was rotated each day.

At about 11:30 a.m. Bryant testified that she was sitting at her desk when Respondent entered the roll call office with a piece of paper in his hand and "he directed to Officer Callahan saying, 'do I have this two days in a row? Do I actually have 1PP two days in a row?'"

Bryant described Respondent as "upset" and "angry. It looked like, you know, it looked like he was actually turning red. He was very upset." Callahan, Bryant testified, gave him a puzzled look and said, "I guess so." Respondent then left the room.

³ A magnitude 7.0 M_w earthquake occurred in Haiti on January 12, 2010, resulting in over 300, 000 deaths.

Bryant said Respondent returned about 15 or 20 minutes later. She testified:

He was really angry by that time and he was yelling at the top of his lungs, and you know, saying, “[W]hat’s wrong with you people? Why are you fucking with me. Why are you doing this? This has got to stop.”

He was very angry, he was yelling and shaking, and stood shaking that piece of paper in his hand.

She said Respondent’s conduct and statements were directed at Callahan, and Bryant also noted that Respondent banged on Callahan’s desk.

Bryant testified that Garcia came in and asked Respondent to stop but Respondent did not stop and kept on screaming. Bryant said that she was “was a little afraid” and got up and went to the window and then to the door.

On cross-examination, Bryant agreed that the details were assigned on a rotating basis and that not all the officers “jump for joy” when they get the assignments. She agreed that it was common for officers to come to the roll call office to discuss their assignments. She agreed that it was highly unusual for one officer to be given the detail three separate times. But she did not agree that it would take some deliberate effort to manipulate the rotation system to have one officer get the assignment three times in a month, explaining that in circumstances where, for instance, an officer was out sick or had to go to court, another officer would be assigned to fill the detail assignment.

Bryant agreed that when Respondent first came into the roll call office what he seemed to be saying was that he was tired of being picked on and that this had to stop. She agreed that Respondent appeared to be turning red and was someone at his wit’s end, someone who was frustrated. She agreed that Respondent simply want to know why he

got the detail again and that Callahan responded, "I guess so" and shrugged her shoulders. Respondent then left.

According to Bryant, when Respondent came back a second time and Garcia came in, they were just trying to calm him down and get him to leave the office. She agreed that during the efforts to calm Respondent down no one tried to give him an explanation.

Bryant did not recall Respondent saying words to the effect that he had this assignment two days in a row. She agreed that during her official Department interview she had recounted that he said that. She agreed this was the first time Respondent came in to complain about this assignment. She said officers often came in about assignments and to see if there was something they could work out if there is a problem. She explained why that did not happen in Respondent's case because "[h]e was just so upset we couldn't talk to him. There was no – there was no, you know, trying to reason with him."

She said no efforts were made to address Respondent's concerns after he initially left because they thought that he was going to speak to the lieutenant to try to work something out. She said they did not realize he was going to come back.

Bryant could not say for sure if efforts were made to accommodate Respondent after he left the second time. Bryant agreed that she had never seen Respondent like this before and that he had been respectful prior to that.

Bryant did not recall Callahan telling Respondent that supervisors and officers at the precinct did not like him and that he was an EDP (emotionally disturbed person).

Lieutenant William Church

Church has been a member of the Department for 25 years and for the last five and a half years he has served as Commanding Officer of the Headquarters Security unit.

On April 15, 2009, Respondent was working the headquarters security detail and was assigned to the municipal garage outer checkpoint post, at a security booth at the location.

Church said that Respondent's main responsibilities while working at that post was to credential vehicles entering into the garage and to push a button that activates the vehicle barrier that allows the vehicles to enter and exit the garage.

Church described what happened at about 3:20 p.m. on that day:

I was driving out of the municipal garage. I approached the barrier. The officer didn't turn around and look at me and engage me in order to open up the barrier. The officer didn't look at me and engage me in order to open the barrier. I sat and I waited for a couple of minutes to see whether or not he would be observant to what his responsibilities were, which he was not.

At such time, I hit the siren on the car. I have a Department auto. I tapped the siren a couple of times and he still didn't look up. He didn't look in my direction.

At that point I got out of the vehicle I walked around to the security booth I had my ID card in my right hand I tapped on the window held my ID card up to him. The officer had his head down and he was texting on a cell phone. He looked up at me he actually smiled at me and then went back to texting on his cell phone at which time I actually tapped on the window again.

At that point he stood up, stepped out of the booth. I advised him that he was inattentive on his post and texting on the phone which was unauthorized. I identified myself who I was and I used my cell phone at that point my Department cell phone to call into the office and I directed the sergeant to have another officer come out and replace him on that post.

Church said that Respondent did not respond to him at any point and did not say anything. Respondent's only response was the smile that he initially gave him when he first looked up.

On cross-examination, Church agreed that the booth is rather small. He said the chair in the booth is firm on the ground but that it does turn. Church agreed that Respondent would not have been able to turn 180 degrees but that would not have been necessary as a car pulling up to the barrier would be "right over his shoulder" to the left of where the officer would have been seated. He added, "Maybe slightly behind." Church agreed that the barrier is angled forward, out to where a threat might be.

When Church was asked, "You would agree with me, common sense and life experience, we can't turn our heads 100 degrees behind, it's just not designed that way, correct?" he responded, "Our heads don't face directly back sir."

As to whether there was a presumption that vehicles leaving the garage were less priority than vehicles coming into the garage, Church asserted that the post has two purposes and that he would not put a higher degree of responsibility on either; it is a security position and an access control and exit position. He did agree that from a threat standpoint, entering vehicles are more important than those exiting.

Church agreed that the booth is slightly tinted. Church said that he saw Respondent manipulating his fingers on the keyboard of his cell phone. He did not see specific letters, numbers or symbols being texted. Church asserted that he too has a cell phone and that he is familiar with the process of texting and in his observation Respondent was actively engaged in texting on his phone.

Church agreed that someone could be playing on his cell phone and not actually texting on it. Church agreed that he did not actually see a text message in the text section of Respondent's cell phone and he did not see him type any letter or number in the text section of his cell phone. Church again asserted that it was his belief that Respondent was texting.

He could not say that Respondent was not texting as part of official Department business.

Church said when he drove up to the booth Respondent did not turn his head. He agreed that when he walked up to the booth Respondent was facing forward. Church asserted that he saw Respondent texting; his cell phone was down in front of him on his lap. He said that Respondent's body was not between him and the phone, as he had walked up to the side of the security booth. He looked through the window and down into Respondent's lap and saw him texting. Church said he was next to the booth when he placed his ID card up to the booth.

Church acknowledged that he had testified that after showing Respondent his ID card Respondent went back to texting. He did not write this down anywhere. After reviewing the statements he made at his 2010 official Department interview, Church agreed that at no point did he say that he had shown Respondent his ID card and that Respondent then went back to texting. Church asserted that he was not specifically asked about that and had he been asked he said he would have given the same answer he gave at trial.

Church said he had discussed the issue with the Assistant Department Advocate about two months ago. Church said that he showed not his badge, but his ID card to Respondent and that it indicated he was a lieutenant.

Church did not know Respondent prior to that day. His picture is not on display indicating that he is the Commanding Officer of the Headquarters Security. He noted that on that date Respondent was temporarily assigned to his command. He said the siren he used was not a "rumbling" siren.

At this point counsel for Respondent read a portion of the transcript of Church's official Department interview into the record. Church agreed that he was asked those questions and gave those answers. When asked what the reason was for not mentioning that after Respondent saw him he went back to texting, Church answered that there was no specific reason and said that he answered the questions asked of him to the best of his ability on that day.

Church agreed that the first time he mentioned that Respondent resumed texting after seeing him was about two months ago.

On re-direct examination, Church explained that an officer in the security booth had two ways of knowing a vehicle exiting the garage was at the barrier. The officer could look over his left shoulder and see it or observe it in a mirror on the booth. He noted that Respondent was not looking at the mirror because he had his head buried looking down. He said Respondent was occupied with something in his lap and that he believed Respondent was texting.

On re-cross examination, Church stated that he did not recall the mirror being broken nor did he have any information about the mirror being broken on that date.

Police Officer Gino Mencaroni

Mencaroni is a 19-year member of the Department who is assigned to the 103 Precinct and is also a Patrolmen's Benevolent Association delegate.

On January 28, 2011, at about 3:30 p.m., he and Respondent went to McEvoy's office to adjudicate a CD. He was there as Respondent's union representative.

Mencaroni believed Respondent was under the impression he was supposed to get a two-hour penalty and he was not happy with the one-day penalty he was issued.

Mencaroni testified that Respondent referred to McEvoy by his first name, Charles, two times. He stepped out of McEvoy's office with Respondent who told him that because McEvoy had referred to him by his first name, they were on a first-name basis.

When they went back into the office, McEvoy asked if Respondent was going to sign the CD. Respondent refused. McEvoy also advised Respondent that he was going to give him another CD for addressing him by his first name. Respondent then said that there was racism involved and then he called McEvoy a racist. They stepped back out of the room.

On cross-examination, Mencaroni stated that when he entered McEvoy's office, he did not know what the penalty for the CD would be, but he agreed that Respondent anticipated a penalty of two hours. The CD adjudication was a formal proceeding and McEvoy set the tone. Both Mencaroni and Respondent were in uniform. Mencaroni believed that, based on his experience, McEvoy referred to him by his first name. McEvoy also referred to Respondent by his first name but did not do so in a derogatory or condescending tone. Mencaroni did not recall Respondent telling McEvoy that he

would prefer that he be referred to as "police officer," nor did he recall McEvoy telling Respondent that he could call him whatever he wanted.

Mencaroni agreed that when Respondent first entered McEvoy's office he was respectful, though he could not remember exactly how Respondent addressed McEvoy. He could not remember how many times McEvoy referred to Respondent as "Cliff." Mencaroni knew Respondent as "Cliff" as well. Mencaroni did not believe that the penalty for the CD went up from two hours to one day after the incident where Respondent called McEvoy, "Charles." Mencaroni did not tell McEvoy that Respondent wanted to be referred to by his official title of "police officer."

Mencaroni did not believe that Respondent was being disrespected by McEvoy. Mencaroni did not believe that McEvoy said anything to Respondent the first time he called him "Charles" but after the second time he told him something to the effect that he was to refer to him as "Inspector." Mencaroni did not recall Respondent refer to McEvoy as "Charles" after that.

Mencaroni agreed that after he was told the CD would carry a one-day penalty, Respondent refused to sign it. At that point, McEvoy also advised Respondent that he was getting another CD for referring to him by his first name. The second CD was not because Respondent refused to sign the first but was for calling McEvoy by his first name. Mencaroni agreed that the order of events was that Respondent refused to sign the CD and then he was told about another CD for calling McEvoy by his first name. It was at that point that Respondent referred to McEvoy as a racist. Mencaroni said that he then took Respondent out of the office. He did not recall if McEvoy ever referred to Respondent as "police officer."

Police Administrative Aide Angela Douglas

Douglas has been employed by the Department for 19 years and has been assigned to the 103 Precinct since 2004. On April 27, 2009, at about 10:30 a.m., she was working in the roll call office with Bryant and Callahan when Respondent entered. He came in upset about a detail that was given to him and wanted to know if it was a “fucking joke.” The statement, she said, was directed at Callahan and she noted that Respondent was angry. His voice was “very loud.” He then left the roll call office.

Later, Respondent came back, and he was still upset and arguing with Callahan. He complained that he had been given the detail twice in a row and “[h]e was talking of personal, you know, about her. About you know how you got the job and who your baby daddy is and all those things.” She testified that Respondent said to Callahan, “do you know who your baby daddy is?” She also testified that Respondent banged on Callahan’s desk and noted that “it seemed as if he was gonna pick the desk up.”

Douglas said she was upset by what was going on but could not leave the office because she sitting in the corner. Garcia entered the room and tried to calm Respondent down “but he was still going at it.”

On cross-examination, Douglas agreed that it is not uncommon for an officer to come into the roll call office to see if his assignment could be adjusted. Douglas was not sure if Respondent had been given the assignment three days in a row. She agreed that officers would get the One Police Plaza assignment several times each month, sometimes as many as three times.

Douglas said she met with the Department Advocate's Office in preparation for her testimony about a week before the trial and she had reviewed her prior statements about this case.

Douglas agreed that on direct examination and in her prior statements, she had said that Respondent was speaking to Callahan the first time he came to the roll call office. Respondent stood at the door speaking, and Callahan's desk was near the door. Douglas' view of Respondent during the initial conversation was obstructed by a file cabinet, thus she just heard his voice that time. All she heard were rude comments but she did not know to whom, in specific, they were addressed.

Douglas did not hear Callahan tell Respondent, "Cops here do not like you. You are an EDP and do not deserve to wear this uniform."

Douglas recalled that Callahan left the office after Respondent's first appearance. She said that Callahan was there when he came back because when he returned Garcia was with him. She again agreed that Respondent's comments were not addressed to any one particular person. The second time Respondent came, Garcia was telling him to calm down but Respondent was still upset. She did not remember if his comments at that point were directed at any one person.

On re-direct examination, Douglas agreed that the personal comments Respondent made were directed towards Callahan. The desk Respondent was lifting up was Callahan's.

On re-cross examination, Douglas agreed that the personal remarks Respondent made did not occur when he first came to the office; rather they were said when

Respondent came the second time. She had testified earlier that when Garcia came into the office, Respondent's remarks were not addressed to anyone in particular.

Douglas was referred to her testimony about Respondent lifting the desk and asserted that Callahan had been sitting there. She said this occurred the second time Respondent entered the office. Douglas agreed that she had said that she thought he was going to flip the desk during a 2009 statement she made about the incident. Presently, she testified that he actually lifted up the desk.

Police Officer Andrew Wilson

Wilson has been a member of the Department for 17 years and has been assigned to the 103 Precinct for the past 12 years. On February 2, 2010, at about 7:40 a.m., in the vicinity of the TS, he observed Respondent and Margolis having a conversation about Respondent's assignment for the day and why the Margolis was able to comment on it because he did not have his firearms. Wilson explained that it was his understanding that Margolis did not have his firearms because he was on restricted duty. He did not recall Margolis' response to Respondent but noted that it was not an argument at that time. It turned louder when Respondent was exiting the building and yelled back at Margolis that he did not like the comment Margolis had made about Haiti. Margolis, Wilson said, responded that he did not know what Respondent was talking about. Respondent then said that "at least in Haiti they have guns to kill each other." He described Respondent's tone of voice as "loud" and that "he seemed agitated." He described Margolis' tone of voice as "conversational" and noted that he did not raise his voice at all. After making the comment about guns and Haiti, Respondent left the building.

On cross examination, Wilson acknowledged that he was Facebook friends with Margolis but did not know for how long. He does not see Margolis socially. Wilson did not believe he was Facebook friends with Respondent.

He agreed that he could recall what Respondent said but not what Margolis said during their exchange. As to whether he did not remember or did not wish to tell what Margolis had said, Wilson said that he did not remember. The only reason he recalled what Respondent said was because Respondent was using a loud tone.

Wilson recalled that he said that initially the encounter between Respondent and Margolis started off as a normal conversation. He agreed that it is not uncommon for officers to approach a lieutenant or patrol supervisor to inquire about an assignment. When Respondent first approached Margolis, he was not disrespectful but that at some point his tone became loud and he became agitated.

Wilson agreed that the time of this incident Margolis was, he believed, on restricted duty and did not possess his guns. Wilson did not know what, if anything, Margolis had said about Haitians prior to the incident. Wilson was not aware that Respondent is Haitian.

Police Officer Theresa Callahan

Callahan has been with the Department since July 2005, and has been at the 103 Precinct since December of that year. On April 27, 2009, she was assigned to the roll call office because she was five months pregnant and on restricted duty. At about 11:30 a.m., she was at her desk, which is directly in front of the door. Respondent entered the office and asked her about a notification he had gotten for a detail which he wanted to switch or

get rid of. She told him that he had to get permission from the administrative lieutenant because she did not have authority to switch details. Respondent was annoyed and unhappy with the answer and left the office.

Shortly after that, Respondent returned and “[h]e started yelling why - - why do we keep doing this to him, ‘why do you people keep fucking with me?’...He kept repeating it, you know, kept just yelling, you know, ‘I have a partner, why do you keep doing this? Why do you keep doing this to me?’ He became irate.”

She said the comments were mostly directed at her and that he repeatedly slammed his hands down while he was screaming. She also said he kicked the bottom of the desk and put his hands on the edge and lifted it a bit “in his fit of anger.” She said that he then clenched his hands, like a fist, and put them up to his chest. She testified that “it got completely out of control” and when he lowered his hands and rested them on his gun belt Callahan ran out of the office because she was scared. She said,

Initially I pushed my seat back when he originally started screaming, you know, trying to because space between us, but I didn’t feel no longer safe just with my seat back, so I ran out of the office because I was pregnant and I was unarmed.

As she left she ran into Garcia who had left his office and was running down the hall. Garcia asked her what was going on because there was still screaming behind her. Garcia then ran into the roll call office and closed the door but Callahan said she could hear what was happening. Respondent was still screaming. Garcia kept telling him to lower his voice but Respondent kept on screaming.

Callahan said she went into the bathroom to wash her face off and calm down and when she returned it was quiet.

On February 2, 2010, at about 7:40 a.m. Callahan was coming off the elevator at the 103 Precinct on the first floor near the desk when she heard a man yelling. It was Respondent who was yelling and no one was yelling back. She determined that he was yelling at Margolis. She heard Respondent say something to the effect of "at least we go out on the street." His last comment was, "at least Haitians have guns." Margolis did not respond and did not even turn around. She described Respondent's demeanor as "nasty."

On cross-examination, Callahan stated that she had been a police officer for almost four years on April 27, 2009, and had served as Margolis' driver. At some point in time she had become Facebook friends with Margolis but she did not recall if she even had a Facebook account in 2009. She did not know if she was Facebook friends with Respondent. She denied ever having an intimate relationship with Margolis.

Callahan said that on April 27, 2009, Respondent came into the roll call office to complain about a detail. She did not know if he had been given the same detail before and she denied that she was in charge of assigning this kind of detail. She did not recall what detail Respondent was complaining about.

Callahan agreed that it is not uncommon for a police officer to come into the roll call office and inquire about being given a detail. She said it was incorrect to say that it was not uncommon for her in that conversation with the officer to change a detail.

She said that when Respondent first came into the room he wanted the detail changed. She could not make that change. While the tone Respondent used when he spoke to her was not disrespectful, Callahan said he did not have "a friendly demeanor, he wasn't happy to be there. He was - - he was annoyed. He wasn't conversational."

During this first encounter, Respondent asked why he had to see the administrative lieutenant and Callahan explained to him that she did not have the authority to change details. Respondent then asked her several times more and only left after asking "numerous times." She agreed that during this first encounter there was no screaming, yelling or slamming on desks.

Callahan testified that when Respondent came back he said, "Why are you fucking with me." She said he used the word "fuck" repeatedly. However, after reviewing a transcript of her 2009 official Department interview (RX D), she agreed that she did not mention Respondent's use of the word "fuck" during that interview. Presently, Callahan stated that she did recall that he used that word. She said she recalled then and now that Respondent was banging on the desk and attempting to lift it, although she did not mention this during her interview and did not write these things down.

With regard to the incident involving Respondent and Margolis, Callahan acknowledged that she did not hear anything Margolis may have said and this was not because she did not remember what Margolis said but because she did not hear anything he may have said. She said she only remembered the two statements that Respondent made. Initially, for a moment, she did not even know who Respondent was yelling at. She remembered Respondent was being disrespectful.

Callahan said that she was aware that Margolis had previously testified in this proceeding. She denied having had any conversation with him about his testimony. She had reviewed her statements with the Department attorneys just prior to testifying.

Going back to the April 27, 2010, incident Callahan said that Respondent had said, "I have a partner. Why are you guys doing this to me? We're supposed to work

together." She added that he "[c]arried on and on." She testified that Respondent made the statement about why are you guys doing this to me "at least once" and denied that she said that he ever made that remark repeatedly, either at trial or in her prior statement. She then read from that prior statement:

He left the office and came back into the office a couple of minutes later. He immediately started yelling. Ask, yelling, why are you doing this to me? Why are you doing this to me? He had his hands clenched up on his chest, screaming, you people do this to me all the time. I have a partner. I'm tired of this. I'm tired of this.

Callahan testified that Respondent kept "screaming a lot of different things." She did not say anything during his screaming and she did not yell back at him. She denied telling Respondent he was a nut case and not fit to wear the uniform, saying, "There is no way I could say that to him while he was screaming." She denied she ever said that to Respondent before, stating, "No, before that we had a decent relationship." She denied saying anything like that to Respondent before she went out and ran into Garcia, asserting, "No sir. I did not say anything. I could not say anything and I would not say anything to him at that moment."

Callahan denied knowing that Respondent is a Muslim. Callahan agreed that she was not there from the start of the February 2, 2010 incident with Margolis. She could not recall having a conversation during the incident or having anyone tell her what Margolis had said, if anything.

Respondent's Case

Respondent called Police Officer Michele Alexander and Computer Specialist William James as witnesses. Respondent testified in his own behalf.

Police Officer Michele Alexander

Alexander has been employed by the Department for nine and a half years and is currently assigned to the Queens Court Section. In 2008, she worked in the 103 Precinct and she and Respondent became partners. She had been informed by Respondent in 2008 or 2009 that he has [REDACTED]. When asked how she handled Respondent's [REDACTED] as his partner she said, "I gave him the same respect I gave any partner that I had to work with, with a disability or without."

Alexander testified that Respondent departed on a vacation scheduled for the week of April 12, 2009, which was Easter. She noticed the roll call initially listed him as being on vacation, then that was changed to him being absent without leave (AWOL). She understood that to mean that Respondent had refused to come to work after being called off vacation. Alexander called Respondent to let him know.

Alexander was not privy to the incident that occurred in the roll call office, as she was not there. They were working together prior to when Respondent went up to the roll call office to find out why he was being given the One Police Plaza detail again and why he was being separated from his partner.

Alexander indicated that at some point between April 12 and April 27, 2009, she had heard Callahan say, with regard to the AWOL incident, that she did not understand why Respondent was so upset (at being called back from vacation) because he was a Muslim and did not celebrate holidays. Callahan also told Alexander that she did not order Respondent back from vacation, that she had told their sergeant, McClinton-Young to do so.

With regard to the April 27, 2009, incident Alexander testified that she heard Garcia state why Respondent “was being punished for that date”:

Lieutenant Garcia stated we’re sending him to the pool detail. They’re asking to go to the pool detail, other officers, but no, [Respondent] is going to the detail at the pool because he decided he wasn’t going to do the detail, or he wasn’t coming back off of vacation, or he wasn’t coming back, he was returning to do the detail.

Alexander said that she also heard that Respondent went to the hospital because of [REDACTED] on or about April 27, 2009.

During 2009, when she and Respondent were partners, it was their supervisor, McClinton-Young, who did their evaluations.

Alexander recounted that on February 2, 2010, everyone was standing around in the common area of the 103 Precinct, and Officer Callahan walked past Alexander and stated, “I don’t know what he’s so upset about. What he [Margolis] said about the Haitians are true.”

Alexander said she was not privy to any conversation that took place between Respondent and Margolis that day.

Counsel for Respondent then asked Alexander about the roll call on January 12, 2010. Alexander stated that on that day they were being assigned to the hospital “and that they did regular roll call.” Then she said her assignment changed and she believed, although she was not quite sure, she was given stationhouse security.

Counsel for Respondent then stated that he wanted to back her up and that he was talking about the February 2 incident after Callahan stated why is he so upset and not the October 30 incident. Alexander responded:

I was actually - - after she made her statement, I went into the car and [Respondent] was actually in the vehicle with me and started crying.

Alexander stated that she was aware of the earthquake in Haiti and that Respondent had advised her that he could not find his family members or thought something could have happened to them.

Asked what Callahan did after she made the statement to her Alexander responded:

She went over to the actual front desk, which is where the lieutenant was standing behind that desk, to console him where she was tapping him to let him know calm down, everything is going to be all right.

Alexander described the desk are as very busy place where they go for roll call and after roll call to get RMP keys and notifications. She said it is usually congested and loud.

Alexander was present at roll call on October 30, 2010. She said that Respondent was her partner, but they were not assigned to work together.

She said she was initially assigned to guard a prisoner at a hospital and Respondent was assigned to guard a prisoner at a different hospital. She did not believe they were being sent to the same hospital nor were they to be transported in the same vehicle.

After roll call was over, Mikulus, who had exited the muster room, returned and told her she was doing SP-10 with Respondent. She said that Respondent was not present at that time and that the SP-10 car was referred to as the "rookie" vehicle.

After she received the assignment, she was given RMP keys from Kipp and went to the RMP and sat in it. Respondent was not at the desk when she got the keys. She said she waited about two minutes and then went back in and asked Kipp where her partner was. He told her to find him. She went up to the locker room and called for him

but he did not answer. She did not recall if she went downstairs to look for him. She said she told Kipp she could not find him and that she was going back to the RMP. Kipp said he would find him.

Two or three minutes later, Alexander said, she got out of the RMP again and went back inside when she saw Respondent at the desk. She then went back to the RMP and Respondent came out and went to another RMP that was across from the RMP she was in, entered that RMP, put the key in, checked the RMP and got into the driver's seat.

At this point she said he was sitting in one vehicle and she in another. When asked how they rectified the situation Alexander testified:

He came out of the vehicle, and was like, you ready? And I'm like, yeah, you're driving that car? You're driving in the car? He was like, we're getting in that car. And he was like, yeah, you're getting in this car, they gave me keys for this vehicle. I said, well, I have keys for this one. Let me give these back and then we'll go on patrol.

She returned the keys to her RMP and went on patrol with Respondent and assumed the SP-10 duties.

Alexander agreed that there came a point in time where Respondent tried not to be her partner anymore. She said, "It had to be fairly after, after in maybe about February, late February." She identified the year as 2010.

She said Respondent told her he did not want to be partners anymore because the mistreatment he was getting was being visited on both of them and he did not want her to suffer because he was a Muslim. She was upset by this. She said that her evaluation had also been changed by Margolis and it was after that that Respondent suggested she should distance herself from him. She said she tried to do that.

Alexander testified that she had filed a sexual harassment complaint against Margolis. Based on what she has seen Callahan had the authority to give assignments out of the roll call room. Alexander claimed to have seen Callahan give assignments like the One Police Plaza detail given to Respondent. She said that Callahan also controls assignments such as the SP-10 and One Police Plaza. Callahan is junior to her and to Respondent.

On cross-examination, Alexander testified that the person who marked Respondent AWOL on the roll call in April 2009 was McClinton-Young. Alexander asserted that Respondent was not AWOL. Alexander was not at roll call on April 27, 2009, and did not see anything there. She was not present for the incident between Respondent and Margolis on February 2, 2010.

Alexander agreed that roll call begins at about 7:10 to 7:15 a.m. With regard to October 30, 2010, she and Respondent were initially assigned to watch hospitalized prisoners. At some point during roll call the patrol sergeant changed her assignment to SP-10. She did not observe the sergeant tell Respondent about the assignment but she agreed that she was under the impression that she and Respondent were going to share an RMP. She agreed that she waited two minutes in the RMP and then went back in. She denied that she went back in at 9:00 a.m. and stated it was much earlier than that but she did not recall the time. She asserted that it was earlier than 8:00 a.m. She agreed that first time she mentioned "two minutes" was today.

Alexander agreed that she was not the one who found Respondent but that she saw him at the desk and they went on patrol at that point. She agreed that when she saw

Respondent at the desk he was not "suited up" for patrol and did not have his gun belt or coat.

Alexander agreed that she did not get along with Margolis. She said that she actually did get along with Callahan and that she liked her, despite the negative statements about Respondent that Callahan had made. She and Respondent were friends and got along and she cared for him.

Alexander stated that she was unaware of Callahan being pregnant or if Callahan had her firearms or not while she worked in roll call. She asserted that Callahan made decisions about who got assignments.

Alexander agreed that Bryant and lieutenants could override Callahan's decisions regarding detail assignments.

On re-direct examination, Alexander stated that the lieutenants generally can override an assignment made by Callahan but asserted that at the 103 Precinct Callahan's decisions were not overridden and that she was not aware of any of her decisions being overridden.

Alexander stated that she did not get along with Margolis because: "he violated my ability to actually perform my job by sexually harassing me." She said she had filed complaints against Margolis relative to the "many" sexual advances he made towards her.

With regard to the February 2, 2010, incident, she had just come off the elevator when Callahan made the remark to her about not knowing why Respondent was so "pissed off." She said that both Callahan and Margolis were in the area but Respondent was not and that she saw Respondent outside in the car crying.

On questioning by the Court, Alexander clarified that she was not present at roll call on April 9, 2010, and that that was the day when Margolis allegedly made a statement about Haitians. She said she had not heard what Margolis said, "from his mouth."

Computer Specialist William James

James works in the Management Information Systems Division (MISD) as a local area network (LAN) manager administrator. He currently supervises about 12 people including police officers. In 2005 he supervised about 15 people including Respondent.

James testified that he supervised Respondent for about a year and Respondent was a very good employee and very respectful. Respondent worked in an above-satisfactory manner and he was one of his top five LAN managers. He said Respondent had been a technician who provided desktop support for One Police Plaza and at some outlying areas.

James agreed that Respondent had access to sensitive material. He was not aware that Respondent had [REDACTED] and did not see anything that was detrimental to his performance. James said he would love to have Respondent come back to work for him as he was one of the best LAN managers.

On cross-examination, James agreed that had written a letter on Respondent's behalf and the letter stated that Respondent was assigned to MISD from November 2004 through December 2005. James agreed that the last time he supervised Respondent was about seven years ago and that he had no idea how Respondent performed on patrol. He had never seen Respondent perform at the 103 Precinct and was unaware of the allegations in this case.

James said that when Respondent worked for him, he had no complaint about going to details.

The Respondent

Respondent has been with the Department for ten years, having been appointed on July 22, 2002. He had served in the United States Army which he had joined "pre-entry" in 1986 and became active duty in February 1987. He served active duty for five years and then for four years in the reserve. He served in Operation Desert Shield and Operation Desert Storm and received two Bronze Stars, and recognition for serving overseas and good conduct. He loves being a police officer. Respondent has five children.

Respondent testified that from 2002 to 2006 he had no problem of any kind in the Department. He started having problems when he was transferred to the 103 Precinct on December 27, 2005. At some point, he was placed on the day tour.

He said his first introduction to the day tour platoon commander, Margolis, in 2006 involved Margolis making a comment about Palestinians and "I was kind of annoyed about that." Respondent said he brought it up to his delegate. Respondent, who indicated that he is Muslim, said the remark was something about the Palestinians not belonging in Israel but that he did not write it down. Respondent did not believe Margolis knew he was a Muslim at that time.

After complaining about that remark, Margolis started putting him on foot posts. He stated that these were mandatory two-person foot posts but that he was assigned by himself. He said that he believed that this was in retaliation for his complaint.

Respondent testified that there came a time in 2007 when he and Margolis were no longer working the same tour. When asked how that happened Respondent stated:

When I addressed the situation. It couldn't get resolved. I went to Deputy Inspector Blake at the time and talked to him about the situation, and he told me he didn't say he is going to handle it, but within a month he will be removed as platoon commander.

On April 15, 2009, Respondent was working at the municipal garage at One Police Plaza. He said he was seated at the post facing incoming traffic. He described the area (security booth) as "pretty tiny." He said that one could not turn around in the seat and that cars exiting the garage would come up behind him.

Respondent explained that prior to that date he had been on vacation with his children who he had to pick-up in Florida. While he was on vacation his sergeant, McClinton-Young called and advised him that Officer Callahan had stated that he needed to come back and work at headquarters on Easter Sunday.

Respondent said that he did not come back he explained:

Because I was I drove. I had to pick up my kids from Virginia. Excuse me. It's driving. I had to drive down and pick them up, each kid. It was impossible to turn around and go back up. My family got involved. They panicked. They thought I was going to lose my job.

Respondent described the headquarters posting as a 12-hour tour which starts at five in the morning. He stated that this type of assignment is for everyone even someone with his years on the job. He said that he would expect that assignment twice a month.

When Respondent returned from vacation he was assigned, on the 13th, to "prisoner warrant" in which he had to escort prisoners to see a judge. On the 14th he was assigned to "barrier detail" in which he had to transport barriers to a detail that was going on. Then on the 15th he was assigned to headquarters.

Respondent testified that he knew Church, “from the past.” Respondent stated that Church had checked him out that day to make sure he was doing his job at least twice. Respondent further testified that Church is a lieutenant. When asked about Church’s responsibilities Respondent stated: “He has to make sure we are performing our duties.” Respondent agreed that Church was his “reporting officer.”

Respondent testified that when he was working the security booth cars leaving would blow their horn to have him bring down the gate. He said there was a mirror but that the mirror was always broken. Respondent said that there did come a time when he used his personal cell phone. When asked what time he replied: “Around 2:55, I believe. 1555. 1455.”

Respondent said that he was holding it in his hand and reading it. He said that while he was doing this he was able to see incoming traffic because “you can always see forward” but that you could not see outgoing traffic. He said he was reading Patrol Guide section 205.18 regarding being absent without leave (AWOL). He said he was doing this because he had been told he was getting a command discipline for being AWOL. He stated: “From my understanding I was AWOL April 11th and April 12th. ”

Respondent denied being inattentive to his duties and asserted that he was doing his job, “I was reading but I was also watching the incoming traffic.” He said to his knowledge it was not improper to read the Patrol Guide while on duty stating, “That’s one thing we can do.”

He said Church did not blow his horn to try to get out of the garage. He asserted that Church “came up from the back and tapped on the window.” When asked, “And

when he tapped on the window, what did you do?" Respondent replied: "No, he didn't tap." He asserted that he was startled. He later agreed that Church tapped hard.

Respondent stated that he tried to explain but that Church did not want to hear it. He was told he was relieved of duty and to get someone else to come up.

Respondent again asserted that he had been doing his duty and that no unauthorized people entered or exited the garage while he was there.

Going back to April 27, 2009 Respondent again asserted that he was working and assigned to the SP-10 patrol. He said the SP-10 responds to previous or past jobs. He asserted that in the 103 Precinct it was not common for a person of his rank or length of service to be given that assignment. After meal that day he learned that he was being assigned to headquarters security for the next two tours.

Respondent said that he went to roll call and asked why he was getting back to back assignments to headquarters. He claimed that Callahan stated, "Well that's what you get" and he indicated she "sucked her teeth" in a "very disrespectful manner."

Respondent asserted that it is common for officers to go to roll call to inquire about their assignments. He said his intention in going to the roll call office was to see if they could remove "one of the IPP details." After Callahan "sucked her teeth" he stepped out of the office to see the Integrity Control Officer (ICO) King because they had discussed the situation at roll call.

Respondent asserted that he has a disability, [REDACTED])

[REDACTED] He said he informed the supervisors in his command about it in 2007 or 2008. He did so, he said:

Because I was being treated differently. There are certain things about [REDACTED] you speak too much, jump from subject to subject, you rattle

and I went to bring them up. Listen, I have this, but I have had it since I was a kid, so I know how to manage it. If it's possible to work with me with regards (to his disability).

Respondent believed that Callahan knew of his disability. Respondent said that he trusted King who had been aware of his previous command discipline. He went to see King to discuss the roll call situation. He did not see King so he went to see Lieutenant Garcia. Garcia told him that he was busy doing inventory and that he should see Lieutenant Seegers.

Respondent testified that he called Seegers on the telephone. Seegers told him that he would be in in a few minutes. Respondent said he waited 15 or 20 minutes but Seegers did not arrive. Respondent testified:

I was upset and I went back to roll call...I was loud. I was wondering why are my partner and I always being separated. I have a steady partner. Normally partners don't get separated. Me and her were being separated.

Respondent said that he was talking to "all of roll call." Asked why he was loud Respondent stated:

They weren't listening to me. You know how frustrating that is that I have to have my partner go talk to them, because every time I try to talk to them, they disregard me. Ms. Bryant disregards me. If they are so disrespectful in there, so she goes in there and talks to them.

Respondent acknowledged that he and Callahan had words that day. He said Callahan told him that the supervisors, the boss and the cops here do not like him and that he was an EDP and that he does not deserve to wear that uniform. Respondent stated that he responded by telling her that "she needs to stop sleeping with the bosses."⁴

Respondent stated that he is upset. He said that when Callahan said he was an EDP she knew he had [REDACTED] and was throwing that up in his face. He said that Callahan

⁴ Further in his testimony Respondent clarified that this occurred later in the day.

had only three years on the job and that she does not do patrol. He said that he "goes out there every day" and that he does not know if he is going home, "I deal with some of the people that people here wouldn't deal with." He said:

So for her who only had three years and always been inside the precinct, or driving Lieutenant Margolis around, to come and tell me something like this. And she would never ever talk to my partner like that or any other people with time on like me.

Respondent denied ever banging on the desk, he denied threatening anyone and he denied ever trying to hurt anyone. He denied ever becoming physical at all.

When asked if Callahan was exchanging words with him Respondent said that she walked out of the office and returned with Garcia. Garcia, he said, told him he was being loud and to stop which Respondent said he did. Garcia did not say anything to Callahan.

When asked if he brought Callahan's remark about him being an EDP to Garcia's attention Respondent said that occurred afterwards. He explained that after the incident King made him go apologize to roll call and that is when Callahan made the remark, "after everything was said and done."

Respondent said that no action was taken against Callahan for her remark to him even though King was there. He said that as they came out of the office King told him that he should not have said what he said. Respondent said he pointed out what Callahan had said to him but King did not say anything about that. Respondent was returned to patrol.

For the period of January 1 to December 31, 2009, Respondent was rated by McClinton-Young. He said that Margolis came part of his "chain of command" in September of that year. At the end of the rating period he got an evaluation from McClinton-Young that he was pleased with but in March 2010, he learned he was getting

a second evaluation from Margolis which constituted a “big difference.” His rating, he said, went from 4.0 to 3.0 as did Alexander’s. No one else in the platoon, he said, got those ratings.

Respondent testified that when Margolis became his platoon commander their relationship was not good. He said when McEvoy came to the precinct he was “new.” When asked if he brought any kind of problems he was having on the job to their attention, Respondent testified:

I brought it to their attention in January -- December, January to my delegate, Dumar, and regarding for Officer Alexander and I having SP-10 handing out the jobs. We were senior officers. We had it under patrol, and suddenly we were switched to a rookie car again by him.

Respondent explained that his family is from Haiti. On January 12, 2010, there was an earthquake there. He still has family in Haiti and when he called his mother he learned that “it was chaos.” On January 17, 2010, he attended a roll call. During the roll call Margolis asked if there were any volunteers for the Department’s mission to Haiti. Respondent said everyone raised their hand. Respondent then testified as to what he said Margolis told them:

He said that, he told all you guys are a bunch of lazy guys. You don’t work here. And you know how those Haitians are, they like going around shooting each other, and he looked at me.

When asked how this made him feel Respondent stated:

I had to get my military bearing back. I had to go downstairs to the bathroom and lock the door. What he did was uncalled for. It was unnecessary. You know, I have jokes, too. He’s Jewish. I have jokes, but I can’t do that. That’s disrespectful. So I went downstairs and got my military bearings back and get back on the street, and that’s what I did.

On February 2, 2010, he said he wanted to speak with Margolis. He said that the reason was that Sergeant Pena had done roll call and he was assigned to SP-10. He had asked Pena why and Pena told him that Margolis had made up the roll call. He also talked to Dumar who told him that "previously that the CO (commanding officer) said that he wants senior guys in SP-10." He said that there were officers junior to him in the command at that time and they had not been given SP-10.

Margolis, he said was next to Pena in the corner of the desk. Respondent said he asked to speak to him privately but he was told no. He said they had eye to eye contact in the beginning. He said he wanted to ask when the CO requested senior officers for the SP-10 assignment. He then asked what date that occurred "because Dumar stated that you said that the CO said it." Respondent then testified:

And he turned around and said I'm the platoon commander, I can do whatever assignment it is. I said, you're right. You're right. And as he was walking away from me, I said -- he is walking away. I said, I don't appreciate the comments you made about the Haitians the other day. He turned around and said, well, if you have a problem, go to EEO. File an EEO. You know, file an EEO. Everybody files EEO's against him anyway. That's what he said.

Respondent stated that he had filed two previous EEO complaints against Margolis. He said in late January he had filed one regarding a sexual harassment on a rookie police officer. He also filed an EEO complaint against Margolis for the comment on July 17th. Both were filed before February 2, 2010 and Respondent said Margolis knew about them because he told people about them.

Respondent stated that as he was speaking Margolis started walking away from him and Respondent said he viewed that as disrespectful. Margolis had not informed him before walking away that the conversation was over. Respondent said the comment that

Margolis made, that he file an EEO was made in a derogatory manner and that it was "disrespectful" and "condescending." Respondent said that Margolis said it, "Like water off his back."

Respondent testified that as he walked out he said "At least Haitians have guns." Respondent acknowledged that as he spoke "it was loud" but then noted that it was tour change and "there was loudness in there already." Respondent denied cursing at Margolis. Respondent denied yelling at Margolis. Respondent denied using a disrespectful tone towards Margolis. He said that as Margolis walked away he went out to patrol.

Respondent testified that he was RDO on the 3rd and 4th and that after roll call on February 5, 2010, his guns were taken away by Lieutenant Lareese. He said this happened in the roll call office and that other officers were there. Respondent testified:

There was a smirk going on, too, at the same time. Again, I have [REDACTED] I am watching something that's not normal. Everybody was different that day and I could sense it. And when he asked me for the guns, it's like okay. Captain DeDean (phonetic) wants me to get your guns now.

Respondent said that as a police officer it was humiliating to have his guns taken in front of co-workers.

Respondent said that on February 2, 2010, there was never any talk of his using his guns against anyone and that he has had a gun for 20 years. He said he was told to go to [REDACTED]

Respondent described his understanding of [REDACTED]: "I [REDACTED] In [REDACTED] is to do monitoring to find out, I believe, the [REDACTED] of a person who goes in and explain the situation." He agreed that he was being [REDACTED]

[REDACTED] stated: "Yes it was originally supposed to be Detective Rodriguez, but it turned out to be a sergeant, which I can't pronounce his name."

Respondent said he believed he was being evaluated to see his [REDACTED]. Respondent said the sergeant told Lareese to return his guns and take him to EEO. Respondent said that he does not have his guns to this day. He said his guns were never returned to him.⁵ He asserted that the Department has never mandated that he get any [REDACTED] or evaluation since his guns were removed.

On October 30, 2010, Respondent said he was "doing" roll call when he was assigned to "Jamaica Hospital post." He was not assigned a vehicle. He said he was assigned a vehicle after he was informed that he had to do SP-10 with Alexander.

Going back Respondent claimed that at the roll call he understood his assignment to be the hospital post. He was supposed to be transported to Jamaica Hospital in a sector car. That assignment changed he said.

Respondent testified that Mikulus came and stated that he had to do SP-10 with Alexander. He said that at that point he was given the keys to a police vehicle but he did not report to Alexander. Respondent said he spoke to Mikulus and told him that he and Alexander were no longer partners. Respondent testified that Mikulus then told him that he was going to make an accommodation whereby Alexander would do the TS and he would get a new partner. Respondent said that Mikulus told him to wait for a new partner.

⁵ Apparently this is in error as officers are not generally assigned to patrol when they do not have weapons. Respondent testified that he was on patrol on October 30, 2010, so would have had his weapons back by that date, if not earlier. His personnel records indicate that he was placed on modified assignment, which would entail the loss of his weapons, on January 28, 2011. Respondent remains in that status as of this writing.

Respondent said he had car keys for vehicle 4781 and that he put them back and waited in the 124 Room. Respondent said he waited for a time in the 124 room and then went back to Mikulus to let him know that he was still waiting. Mikulus, Respondent said, told him he was working on getting him a new partner. Respondent said he told Mikulus that he was going down to the lounge.

Respondent testified that as some point someone came down to the lounge. He said he didn't know who it was, "I thought it was Officer Alexander, but I'm wrong."

Respondent testified:

I went upstairs, and I went to the RMP real quick and went to use the bathroom, then Sergeant Kipp called me at the desk...Sergeant Kipp told me I was working I explained the situation and told Sergeant Kipp that Officer Alexander and I don't work together anymore. We were partners for like two-and-a-half years. We were the second senior partners, first senior partners on the day tour. We were no longer because of the circumstances because of Margolis.

He did not learn that day that he was facing charges for disobeying an order. Respondent stated that "once he was assigned" he went outside and Alexander was in another vehicle, 2286. He said he had keys for one vehicle and she had keys for another. He said that Alexander went to "check back" one vehicle and they went out on patrol together. He said he recalled that her vehicle was too small for him.

Respondent testified that he did exactly what he was told to by Kipp which was to go on patrol with Alexander. He never had any intention of disobeying an order that day.

Respondent asserted that it is not uncommon for an officer to question an assignment. Respondent said that from his service in the military he is familiar with the chain of command and orders. He has never had, he said, problems obeying orders in the military.

Respondent stated that going back to 2006 when he was assigned to man a two-man post he obeyed the orders noting that he had to. He said these were foot post assignments. He stated that those orders had come from Margolis. He said that he has never had a problem obeying an order in this Department or in the military.

On January 28, 2011 Respondent said he was on duty and assigned to stationhouse security. He said he was on limited duty at the time due to a line of duty injury in which he suffered a herniated disk.

Respondent said that on April 28, 2009 he had gone to the hospital because his chest was pounding and he felt like it was going to break out. He said he called in sick and went to see Dr. Lee. He said he saw Lee at the [REDACTED] on Rockaway Boulevard where he was examined.

Going back to January 28, 2011 Respondent agreed that there came a time when he spoke with McEvoy. He said this was not the first time and that he had spoken to him about five times before. He said one of these prior visits was in regard to the evaluation that Margolis had changed and the other two times involved the "Kipp CD." He testified:

It was going to be a two hour command CD that he was going to give me and I was telling him that that's not me, I never disobeyed an order. I did that twice. At the same time in all these times, he kept calling me Cliff. Two occasions, I asked him can you address me by my rank and name.

Respondent agreed that he was complaining about the treatment he was receiving on the job. Asked to describe McEvoy's tone, Respondent stated:

He has - - there is a disrespectful tone. You know, it's like he is superior than I am, and it's like, you know, that's what he was doing it for. And it kind of bothered me because I have been in the military and I never had a problem in all my previous commands, call me by my rank and name. You know, it was disrespectful. I was like what

are you doing? Give me some respect. I work out there on the street. I am the one going to end up killed, not you.

Respondent indicated that he had asked McEvoy to address him as "police officer." Respondent stated:

The way he said it, it's condescending when he does that. What are you doing? I'm a police officer, I am the one that's helping you out.

Respondent agreed that he felt that by calling him "Cliff" McEvoy was being disrespectful.

Respondent said that the meeting on January 28, 2011 was an official proceeding the purpose of which was to adjudicate Kipp's CD for his failure to go to his assignment after roll call. Respondent testified:

He told me, Cliff, I want a day from you. A day. I am thinking to myself, and he kept calling me Cliff. I said, Charles –

Respondent agreed that he tried to explain the circumstances of the events of October 30, 2010 to McEvoy. Respondent agreed that he tried to explain that he had gotten one car and that "Sergeant Alexander"⁶ got assigned another car. When asked "how that went over" Respondent replied:

He was doing the investigation the first two times and the last time it was substantiated. And he wanted a day, vacation day.

On a question by the Court, Respondent repeated that he (McEvoy) wanted a whole day now instead of two hours.

Respondent had a delegate with him. Mencaroni, he said, told him that "he" wanted a day and Respondent said he had said, "Mac, no, it's only two hours." He confirmed that it was his understanding from the previous two meetings that it was only

⁶ As in the transcript.

to be two hours. Respondent he learned on the 28th from Mencaroni that it was going to be a full day. Respondent said he told Mencaroni that that was impossible. He felt that Mencaroni had misheard the inspector. He then testified:

So I went into the room and the Inspector said a day. I'm like, it was two hours. I was going to sign off on it, believe it or not...I was going to sign off on two hours. I know I was right but I was going to sign off anyway.

Respondent said he was prepared to sign off because it was a new year and he wanted to start fresh. Respondent was asked what happened when he went into the room and Respondent testified:

Oh, Cliff, you know, we did the investigation, I found it to be substantiated, Cliff. Right now I am looking to get a day from you, Cliff. And Cliff, this is what I came up with my conclusion, Cliff. Lackadaisical, like I'm your buddy. You are, oh, okay.

Respondent reiterated that he asked McEvoy to address him by rank. Respondent testified:

I asked him, I called him Charles. I said, after he spoke to me, I said, Charles, can we talk about this and Officer Alexander. He said what did you call me? I said Charles.

Respondent testified that McEvoy told him not to call him that. Respondent testified that McEvoy told him that he was of a higher rank. Respondent testified that McEvoy said that he could call Respondent anything he liked as long as it was not derogatory. Respondent testified that McEvoy "jumped out of his seat like he is going to scare me. I am like, okay, whatever."

Respondent said that at that point he told McEvoy he could address him by rank. He stated that McEvoy became upset. Respondent denied calling McEvoy, Charles, after

that. He asserted that he called McEvoy "Charles" one time and that he did not intend to be disrespectful. Respondent explained:

He was acting like my buddy, my friend. We are in uniform. I'm like, this ain't proper. I didn't want to disrespect him, but he was making it very uncomfortable.

On a request for clarification by the Court, Respondent stated that McEvoy never used the word "buddy" and that Respondent was reacting to "the way he was talking."

Explaining further Respondent stated:

You know, hey, Judge, how you doing. Like that. Like calling somebody by their first name. I can't do it. Military training, I can't do this stuff.

Respondent testified that he is currently [REDACTED]

[REDACTED] [REDACTED]. After January 28, 2011 he was no longer assigned to the 103 Precinct. A few days later he was assigned to PSA 6 – Viper 1. He explained that it was "hostile" going to work every day at the 103 Precinct. Respondent stated: "It was a place where you just want to go in, get your assignment, and get out."

Respondent testified that he is having a great time at Viper 1. Respondent testified that he has been under medical care since 2008 and has been under care "throughout." He said:

Yes, but sometimes I try to see if I can wean off the medication, but I go woo woo. I can stay focused for a period of time, but I move around. I can't stand still.

He said that in addition to seeing [REDACTED]. Respondent said [REDACTED]. Respondent testified that he is seeing [REDACTED]
[REDACTED]

Respondent testified that he enjoys being a police officer and that he would like to continue to serve as a police officer. At this point Respondent placed Dr. Calapai's report in evidence (RX E).⁷

On cross-examination, Respondent agreed that on April 15, 2009, he was working security at One Police Plaza. He agreed that there was a chair in the booth. He denied that he was monitoring cars coming in and out and said that he was monitoring cars coming in. He agreed it was too small a space to turn the chair around. He said that at the time the mirror to see cars coming out of the garage was broken. He said the mirror was broken when he worked there in 2005.

He said that cars wishing to exit would blow their horn and he would come out as the space was too confined because he is so big.

He agreed that the cell phone that was in his hand was his personal cell phone. He said that he is a computer technician and he put the Patrol Guide into his phone and he had the Acrobat Reader program installed so he could read it. He agreed that he was researching the section on a possible AWOL. He agreed that he was reading the Patrol Guide while on duty.

He said that when Church came up to him he didn't want to hear anything which is why he did not tell him about the Patrol Guide. Respondent agreed that he had not mentioned the Patrol Guide at his official Department interview.

Respondent agreed that he had acknowledged at his official Department interview that he had been inattentive, stating: "I was inattentive yes but at the same time I was in front sitting and watching the incoming traffic." He also agreed that he probably stated

⁷ In the report Calapai identified himself as a clinical psychologist.

that he was inattentive while on a security post.

Regarding the April 27, 2009, incident, Respondent was asked if he believed it was Callahan's fault that he got the One Police Plaza detail two days in a row. Respondent answered:

Callahan was sitting right there and at the beginning when I walked in, when she made that remark, I did not believe it was her. Oh, well. (Indicating.)

He was then asked to clarify and he said: "At that time when she did that, I believe so."

He agreed that he went to see Garcia. Respondent said that Garcia had said he was busy and then he told him to speak to Seegers. When asked if he was upset, Respondent stated:

I have a steady partner. Normally partners are not separated as many times as my partner and I, and we were the most senior partners on the day tour.

Respondent was admonished to answer the question and he said that he was "annoyed."

Respondent agreed that Garcia told him that the person to see about addressing this problem was Seegers. When asked if he instead went to the roll call, Respondent stated that he had waited 15 or 20 minutes.

When asked if he had disregarded Garcia's order that he speak to Seegers Respondent said that he had spoken to Seegers. Respondent testified:

I did. I called him up. He told me to wait 15 or 20 minutes. He told me to wait, but I waited 15 to 20 minutes.

Respondent agreed that he then took it upon himself to go to roll call and that at that time he was "upset." When asked if it was true that Callahan did not have the authority to give him back to back One Police Plaza assignments, Respondent answered: "Not in our roll call. Our roll call works a little different."

He said he did not know how it works in roll call and he said he knows that when he gets an assignment it is whoever is in there at that time. He agreed that lieutenants are higher than police officers and that Seegers could have done something for him. Respondent added: "If he had shown up."

Respondent denied going to roll call because of Callahan but because he was being separated from his partner and that he wanted to address it "my way." Respondent agreed that he was loud when he got to roll call. He agreed that Garcia had to send him to the ICO's office.

Respondent agreed that in his presence Garcia told King that he had been too loud. Respondent then answered that Seegers was also present. Respondent agreed that Garcia had told both King and Seegers that he had never seen anything like this before.

Respondent agreed that he is claiming that Callahan called him an EDP. When asked if in turn he called her a slut Respondent corrected his questioner stating: "A slut, no, no, no. I told her to stop sleeping with the bosses."

With regard to the January 17, 2010 roll call Respondent agreed that Margolis had said something to the effect that "you are a bunch of lazy guys" but the Respondent said that Margolis also said, "You know how those Haitians are they like going around and shooting each other." When then asked if he was present Respondent stated: "I was there he was looking at me."

With regard to Margolis' opinion of him Respondent testified:

Me and him don't see eye to eye. He doesn't think I'm a police officer anyway. That's his opinion.

Respondent said his opinion of Margolis is that he needs to do his job a little better. Respondent agreed that on February 2, 2010 he had approached Margolis because he had gotten the SP-10 assignment. He agreed that he asked Margolis since when had the CO stated that seniors get SP-10. Respondent said that Margolis tried to come up with an answer before saying that he is the platoon commander and he can assign members where he wants. Respondent then agreed that he said he did not appreciate what Margolis had said about Haitians in the roll call. He then said Margolis said if you have a problem file an EEO.

Respondent acknowledged that he filed an EEO for that and said he also filed an EEO for sexually harassing a female officer who was a rookie. He said the officer involved was Supaside (phonetic spelling). He said EEO never got back to him on his complaints. He said he is disappointed with EEO.

He denied that that is why he brought a lawsuit he said he did so because of a hostile work environment. He said he is trying to work with the Department to resolve the issue. He said "they did not help me. That's why."

With regard to the "at least Haitians can carry guns statement" Respondent testified:

I wasn't generally speaking to him, I was just saying it out loud. There was another officer, one or two others, that didn't have their guns neither...He [Margolis] didn't hear me. He was restricted along with these other officers.

Respondent denied saying it to be rude to Margolis. When asked by the Court what his intent in making the statement was Respondent stated:

My intention was to get his - - frustration. Imagine somebody ... You know, just out of frustration. He wouldn't listen to me, he was derogatory. Just like nonchalant, and he is not paying attention to me, you know. I want to get his attention. He is a supervisor. He is supposed to work with me. I didn't have problems with other supervisors.

Regarding the October 30, 2010 incident Respondent agreed that he wasn't supposed to be partners with Alexander. He stated:

Let me clarify. Officer Alexander and I were partners for two-and a half years, and she was being harassed to not be my partner no more, and later on I found out she also was sexually harassed by Lieutenant Margolis. And to protect her, I made the decision to not be her partner no longer to protect her, but it was too late.

Respondent agreed that Mikulus had assigned him to SP-10. He said this did not occur at roll call, where he had been assigned to Jamaica Hospital, but after roll call. He did not recall what time this was. Respondent denied dozing off in the 124 room. Respondent admitted to dozing off in the lounge where he had been watching television. He said he was waiting for his assignment. He denied failing to go to his assignment because he did not want to do it.

Regarding the January 28, 2011 incident with McEvoy, Respondent agreed that he had a total of five meetings with McEvoy and all were business-related and not social. Regarding being called by his first name Respondent stated:

Even my coworkers don't call me by my first name. It is disrespectful. Because he is a higher rank he should know better.

Respondent then confirmed his belief that even calling another member of the service by his first name was disrespectful. Respondent agreed that he was upset that McEvoy called him by his first name. He said:

Yes, I was upset. He disrespected me, it was condescending. What do you want me to do, just sit there and take it?

Respondent said he was not being disrespectful to the inspector he was just addressing him in the same tone in which he was being addressed. Respondent stated:

After he kept saying, Cliff, Cliff, Cliff, you are going to get this, you are going to get that, I said, Charles, did you talk about this? Did you talk to Officer Alexander? He turned around and he was upset. He said what did you call me? I said Charles. And he said you know I'm a higher rank than you. I don't remember verbatim exactly what he said, but in the end, he said I can call you anything I want, as long as it's not derogatory and at the same time he is saying that, he jumps out of his seat.

Respondent agreed that he had stated that calling a uniformed member of the service by their first name was disrespectful but he said he was not trying to be disrespectful to McEvoy he explained:

I wasn't being disrespectful. I just wanted to show him exactly how it feels when you do that to somebody, being disrespectful to somebody, and that's what he was doing to me.

Respondent agreed that McEvoy was just trying to make him feel comfortable and he acknowledged that he had said that during his official Department interview.

Respondent again endeavored to explain stating:

I wanted to show him how it feels when somebody calls you by your first name, and he didn't like it, and he corrected me on the spot and told me I have to call him by proper rank and name, which I did.

When asked if he had also called McEvoy a racist Respondent stated that in the end he told McEvoy that morale was low and that he was a racist.

Respondent stated that he had problems at the 103 Precinct but that he was having a pretty good time at Viper. He agreed that he has been the subject of an official Department interview for having been discourteous to Sergeant Camacho there.

When asked if he had a motive to testify because he was seeking \$50 million in a lawsuit Respondent corrected and said that the lawsuit was for \$100 million and that he had waited for the last possible moment to file it. He said he was hoping things would get resolved. He then said:

That's why I got a lawyer to work, he offered you a deal and you guys turned it down. What am I supposed to do?

On re-direct examination he said that when he signed on as a police officer he did not do so with the intent to become a millionaire. He agreed that he simply wanted a good place to work. Going on to the "at least Haitians have guns" comment Respondent said: "I asked him questions, he totally ignores me. He talks down to me and this is happening right in roll call. And I've go no outlet to do, just my comments. And I said what I said and I went back and did patrol the whole day. I never went back to the precinct that day."

Regarding Callahan, Respondent stated that she dated Margolis and Sergeant Dimmer as well as a few other bosses. Respondent asserted that his first name was Clifford and not Cliff and he again said that McEvoy intended to be disrespectful.

On questioning by the Court, Respondent clarified that the booth he had been assigned to was the first booth going into the garage (describing the location).

FINDINGS AND ANALYSIS

Disciplinary Case No. 2010-0509 contains three specifications which relate to events on three separate dates. Those dates, in chronological order, are: April 15, 2009 (Specification No. 3) April 27, 2009 (Specification No. 1); and February 2, 2010 (Specification No. 2). The specifications will be addressed chronologically.

Specification No. 3 alleges that Respondent "on or about April 15, 2009, while on-duty, at One Police Plaza, was observed to be inattentive and texting on his personal cellular telephone."

On the day in question Respondent was assigned to man a security booth near the corner of Avenue of the Finest and Catherine Street guarding the entrance to the municipal garage. The officer assigned to the booth controls a steel plate that blocks the entrance. The officer faces out and must check ID before lowering the plate to admit an automobile. The officer must also lower the barrier for cars leaving the garage.

Church, the commanding officer of the Headquarters Unit testified that he exited the garage and drove up to the barrier. He testified that Respondent who was sitting in the booth did not lower the barrier. After a few minutes Church testified that he tapped the siren in his Department car and that Respondent still did not look up. Church exited his vehicle and went next to the booth where he saw that Respondent was texting. He said that Respondent looked up and went back to texting. Church stated that he identified himself and then used his Department cell phone to call his office and have someone replace Respondent at that post.

During cross examination, Respondent, through his attorney, challenged Church on several specific issues. First he argued that because Church did not actually see

characters entered on the screen he therefore did not know that Respondent was actually texting. Respondent also challenged Church's testimony that Respondent, when he finally looked up at Church, smiled and then went back to texting. During his testimony Respondent claimed that Church came up behind him and not beside him as Church had testified.

In his testimony Respondent admitted that while assigned to the security booth he was in fact using his personal cell phone although he denies texting. Instead he claims that he was reading the Patrol Guide because he faced possible disciplinary action as a result of his not reporting for duty a few days earlier.⁸

He claimed that his job in the security booth was primarily to prevent unauthorized vehicles from entering and for this reason he faced outward towards incoming cars. He claimed that given his size, and Respondent is a large man, he could not turn around to see exiting vehicles. He claimed that the mirror which would have allowed him to see exiting vehicles without moving was broken and that vehicles would honk to get his attention.

Respondent also reluctantly acknowledged that during his official Department interview he admitted to being inattentive.

In addition to this admission of inattentiveness the facts Respondent has admitted to establish that he was in fact inattentive. He was, by his own testimony, engaged in reading something on his personal cell phone while he was supposed to be working a guard post. While he disputes Church's claim to have come up to the side of the booth he

⁸ Counsel for Respondent cited what he said was Patrol Guide section 203-06 which he said would permit an officer to text on a personal cell phone if it was part of official Department business. The rule he was citing was actually part of Interim Order No. 7 which was issued on March 12, 2010, almost a year after the incident in question.

acknowledged that Church was able to come up behind him. He thus acknowledged that he was so inattentive that he failed to notice that a car was positioned to exit the garage and awaiting his action long enough for the driver to get out and walk up to the booth where he was seated.

It is no defense that he was or claimed to have been reading the Patrol Guide. While that may a laudable activity for a police officer this was neither the time nor place. His job in the booth was to monitor cars coming in and also to lower the barrier for cars leaving.

Further, in analyzing this specification where Respondent's testimony differs from that of Church, I find Church to be the credible witness. He is first of all a disinterested witness. He had every reason and obligation to check on the performance of officers working security and he had no motive to be untruthful then or at this trial. Respondent on the other hand is an interested witness and more significantly he demonstrated in this instance and other instances in this trial the propensity to bend the truth.

For instance his claim that he could not turn around to see what was going on in the area where cars exit the garage makes no sense. Even if one assumes the truth of his testimony about the mirror, he need only to have turned his head or partially swiveled his body to see the area in question. If, as Respondent claimed the mirror was broken, his job would have been to be more attentive not less. In short he had to do whatever it took to make sure that he was aware of his surroundings in particular to be aware of cars both entering and exiting the garage.

Church testified credibly that he was able to come next to the booth and observe Respondent inside the booth looking down at his personal cell phone. Church described hand and finger motions that are consistent with a person texting. Respondent, for his part, never mentioned reading the Patrol Guide at the time of the incident or during his official Department interview. Church's testimony more than satisfactorily establishes that Respondent was in fact texting.

While the testimony in this matter is sufficient to establish the facts of this specification this Court, on consent of both parties, made a visit to and observed the booth in question. The upper portion is glass enclosed giving an officer in the booth an unobstructed view all around. Respondent is no doubt a large man both in height and girth, nonetheless the Court observed that there would be room for Respondent to turn the upper portion of his body and to turn his head sufficiently to see a car at the barrier. Frankly, Respondent's testimony that he was unable to see the area where cars leaving the garage would be is absurd.

Additionally the Court observed that the button controlling the metal gate is easily accessible from outside the booth and that an officer can stand next to the booth, have a full view of the entire area and operate the gate in that fashion. For all of the above reasons, Respondent is found Guilty of Specification No. 3.

Specification No. 1 alleges that on or about April 27, 2009, Respondent "while on-duty, while inside the 103 Precinct roll call office, wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department when he was discourteous to the personnel assigned to the roll call office, to wit: said Officer became

agitated and began yelling profanities at Police Officer Theresa Callahan, and ignored initial attempts to calm him down."

The allegation here is that Respondent entered the roll call office and yelled and cursed complaining about his assignment to work a detail at One Police Plaza, the headquarters building.

There is no question that Respondent entered the roll call office two times that day. Bryant, Douglas and Callahan were present in the office on both occasions. The first time he was agitated. There was varying testimony as to how agitated he was the first time but he clearly spoke with Callahan and left the office. Callahan's testimony was that she told him to see the lieutenant. Respondent agrees that he left to seek higher authority. He went to Garcia who told him to speak to Seegers. He spoke to Seegers on the phone who, Respondent said, told him to wait 15 or 20 minutes until he got to the precinct. Respondent testified that when Seegers failed to show up in 15 or 20 minutes he went into the roll call office to deal with the matter in his own way.

There was credible testimony from Bryant, Douglas and Callahan that the second time Respondent entered the roll call he was extremely angry and agitated. There is ample testimony that he shouted at Callahan. There was further testimony from those same witnesses that Respondent was cursing and banging on Callahan's desk and attempting to lift the desk. Garcia confirmed that he heard the noise at some distance across the precinct and rushed in to see what was going on. Most significantly Respondent himself admitted coming into the roll call office and being loud. Respondent admitted that he was upset and frustrated, although he denied banging on any desk and downplayed the level of his behavior.

This Court finds the testimony of the three disinterested witnesses Bryant, Douglas and Callahan more credible than Respondent. Moreover Garcia also noted that he heard banging. Therefore this Court finds that Respondent did bang on the desk and was highly agitated. Callahan's testimony that she was frightened is completely believable given the nature of the outburst. Respondent is a very large man and he was armed at the time and seemed out of control. Indeed there is also credible testimony that Respondent was so agitated that he would not or could not initially be calmed down by Garcia.

One of the many non-issues raised by counsel for Respondent during the course of the proceeding was the claim, brought out through cross-examination of the witnesses to this event, that Respondent was not directing his comments to Callahan, as the specification claims. As will be discussed below, Respondent along with his witness and then partner Alexander believed that Callahan had the power to assign details. So Respondent, himself, established a motive for him to have directed his comments at Callahan. Secondly there was ample testimony from Callahan, Douglas and Bryant that at least some of the comments were directed at Callahan. But most significantly even if one were to accept that the comments were directed at all of the roll call staff then Callahan was one of the people who were the subject of Respondent's inappropriate behavior. Respondent is found Guilty of Specification No. 1.

Before closing the discussion on this specification it is necessary, for the sake of completeness, to examine the defenses Respondent mounted regarding this specification. As I have already noted his first defense was that his conduct was simply not that bad.

He admitted yelling but denied banging on the desk or cursing. As I have stated this defense is not credible.

The next line of defense Respondent put forward is that somehow his conduct was justified. Callahan, he claimed, was in charge of handing out detail assignments. She was tormenting him with unwanted assignments to headquarters. He was particularly upset that Callahan, a police officer junior to him in seniority, had all this power over him.

Even if Respondent was correct and Callahan was tormenting him it would not justify the kind of outburst that he engaged in. He had other avenues to address that issue including complaining to the administrative lieutenant, his patrol lieutenant Seegers, the Integrity Control Officer, King or the Internal Affairs Bureau among other possibilities. Moreover, although it was not a direct issue in this case, there is substantial evidence that Respondent was wrong about Callahan's power.

Bryant testified that the lieutenant reviewed the calendar and the lieutenant made the detail assignments. Bryant herself was a supervisor in the roll call office. Callahan testified that when Respondent came into the room she said she told him she did not have the power to change details and sent him to the administrative lieutenant, Garcia. He said that details were actually done by Seegers and suggested that Respondent reach out to Seegers. Even Alexander had to concede that Callahan could be overruled by Bryant or the lieutenant.

Respondent, in his testimony about this incident said that he went looking for King and then Seegers to address the problem with the detail, acknowledging that they were superior to her and had power to address this issue.

It should be noted that it was Respondent's frustration at not being able to find King, the Integrity Control Officer, and impatience in waiting for another lieutenant, Seegers, to come to speak to him, that sent Respondent back into the roll call office in a rage.

A further, and frankly ugly part of this defense, is a claim Respondent attempted to put forward that Callahan had a personal relationship with Margolis who gave her outsized powers over the roll call. It is clear that Margolis was one of a number of lieutenants in the command. There was no testimony that Margolis had any control over the roll call as it pertained to Respondent and these details yet Respondent and Alexander attributed great power to Callahan based on an alleged relationship she had with Margolis.

More importantly on this issue, if Respondent believed the precinct were being mismanaged he had ways of reporting it including making a complaint to IAB, which if he wanted, could have been done anonymously.

Respondent is found Guilty of Specification No. 1.

Specification No. 2 of this case alleges that Respondent "on or about February 2, 2010, while on-duty, within the confines of the 103rd Precinct...was discourteous to a New York City Lieutenant, to wit: said Officer approached Lieutenant Jason Margolis, and started yelling at him over his assignment."

Respondent has offered in essence two defenses to this charge. The first is that he was not discourteous, that he was loud because the area around the desk was noisy. The second is that he was justified because Margolis did not like him and was tormenting him

with the SP-10 assignment which he felt should have been given to officers beneath him in seniority.

Testimony about this incident came from Margolis, Schneider, McClinton-Young, Pena, Wilson, Callahan and Respondent. The facts that were established are fairly straightforward. Margolis had had Respondent assigned to work SP-10. Respondent was unhappy with this assignment. He was a senior officer and felt that the SP-10 assignment should go to a junior officer. Margolis was working at a computer terminal next to the desk. He was facing the wall away from the public area in front of the desk. Respondent was in front of the desk. Respondent acknowledges that he complained about the assignment in a loud voice but he claimed this was not discourteous but merely making an effort to get Margolis' attention in a crowded noisy area of the precinct where Margolis was about ten feet away.

His second line of defense is that he had every reason to be unhappy about the assignment. He believed that he had been given an inappropriate assignment for someone of his seniority and that it was a punishment assignment. Respondent claims that Margolis had a bias against him because of his religion and ethnicity. He claimed that Margolis made disrespectful remarks about Haitians during a roll call, and he is a Haitian. He also mentioned an earlier incident in which he claimed Margolis made a statement about Palestinians which offended him as a Muslim. He also established that Margolis had given him a bad evaluation overriding an earlier good evaluation he had received from McClinton-Young. Thus Respondent believed he had every reason to be upset and annoyed.

There is no question that at a roll call days earlier Margolis had announced that the Department was seeking volunteers to go to Haiti and assist after the tragic earthquake that had just occurred there. Respondent claims that Margolis made a derogatory statement about Haitians during this roll call. Margolis denied making a derogatory statement. Respondent, who is of Haitian descent, said he filed an EEO complaint as a result. Respondent also testified that on an unknown earlier date Margolis had made a comment about Palestinians which offended him as a Muslim and which also caused him to file an EEO complaint.

At the outset it must be noted that whatever occurred at that roll call is not a factual issue to be determined in this case. Margolis is not on trial here and the matter was referred to the appropriate branch of this agency for review. The same is true of the alleged Palestinian statement. However even if Respondent was correct about what happened at the roll call or the earlier incident that would in no way provide a justification for disrespectful conduct toward a superior officer.

Respondent has offered other evidence to support his claim that Margolis disliked him. He provided evidence that he had initially been given a favorable evaluation by McClinton-Young for 2009. Margolis overrode McClinton-Young's evaluation and gave him a different, less favorable evaluation. McClinton-Young testified that he was a good police officer while Margolis, who denied disliking Respondent, said he did not believe he was an effective officer. He gave several specific reasons why he felt Respondent and his partner Alexander were not effective on patrol, such as their alleged failure to listen to the radio and report promptly to calls for assistance.

Whether Respondent was a good patrol officer, or not, is not an issue for this Court. As with Margolis' alleged statement about Haitians, there are other avenues by which a member of the service can challenge what he believes to be an unfair evaluation or improper assignment. They are not a justification for discourteous behavior.

One further note about the evaluations is necessary. Neither evaluation is dated but counsel for Respondent represented that Margolis' evaluation of Respondent was done in March 2010 after the incident being litigated in this specification. McClinton-Young was not certain when she did her evaluation but believed it might have been in March.⁹ Thus it appears that both evaluations of Respondent were completed after this incident. Counsel for Respondent insisted that these evaluations be part of the record in this case but that does not give them relevance. What is relevant is something that Margolis readily acknowledged: that at the time of this incident he did not believe Respondent was an effective police officer.¹⁰

One other issue is worth mentioning in this regard. While not specifically or clearly argued by counsel for Respondent, Respondent may have believed that the SP-10 assignment was in retaliation for EEO complaints he had filed against Margolis.

During his testimony Margolis denied knowing about these complaints but Schneider testified that she was aware of EEO filings by Respondent against Margolis. She believed she had been informed of them by Respondent so it is possible that Schneider knew and Margolis did not. It is unnecessary to determine if Margolis actually knew about these filing on February 2, 2010, as the issue of retaliation is not before this

⁹ Alexander, whose evaluation was also changed, put the event at the end of February because at that point Respondent determined not to work with her as his partner.

¹⁰ Margolis' evaluation of Respondent was lower than others he has received both before and since (see Confidential Memorandum attached hereto).

Court. If Respondent believed that the SP-10 assignment was in retaliation for his filing those claims his remedy again lay elsewhere. It did not justify discourteous behavior toward a superior officer.

While Respondent's two defenses are not directly inconsistent one does tend to undermine the other. That is, Respondent was upset with Margolis who he felt disliked him and had given him a demeaning assignment. Accordingly, he had a motive for being disrespectful.

While Respondent himself provided the motive there is ample evidence that supports the claim that Respondent was in fact discourteous. Margolis testified that Respondent was disrespectful when he spoke to him about the assignment. Schneider, who was the TS operator and sitting near Margolis, was startled when Respondent spoke up. She confirmed that Respondent was discourteous to Margolis. McClinton-Young, who certainly had a favorable view of Respondent, acknowledged that he was "yelling" at Margolis who was less than ten feet away, according to her testimony. She also noted that Margolis was "calm" during this event. Similarly Pena described Respondent as "loud and kind of combative" while also describing Margolis as calm. Wilson remembered the incident a little differently than the others. He described their interaction initially as being a conversation. His emphasis was on a claim Respondent made that Margolis should not be supervising as his firearm had been removed. Wilson also recalled Respondent's parting remark a little differently than the others saying that Respondent said, "At least in Haiti they have guns to kill each other." But Wilson too described Respondent's voice as "loud" and noted that he "seemed agitated" while

Margolis' voice was "conversational." In short all of these witnesses credibly support the claim that Respondent was discourteous to Margolis.

Then there is the simplest factor of all, what common courtesy would have dictated. If Respondent had wanted to speak to Margolis in a polite and respectful way about the assignment he could have come closer so that he would not have to shout to someone whose back was to him as he worked on a computer terminal.

The conduct of Respondent in the manner in which he approached Margolis, yelling at him and challenging him in a public part of the precinct is sufficient to establish that Respondent was discourteous to the lieutenant. But if there were doubt about Respondent's intent to disrespect and insult Margolis the statement he admits to making as part of this incident establishes that intent with crystal clarity. Respondent admits that he stated "at least in Haiti they have guns."

Respondent not only acknowledges he made the statement but he did so because Margolis did not have his firearms at the time. Astonishingly Respondent claims that he did not intend for Margolis to hear this. This claim simply lacks credibility. There is ample testimony that Respondent was yelling when he said it. Intent can often be determined from results and Margolis stated that he heard it. More significantly the purpose of such a statement would be, by its very nature, for Margolis to hear it.

One example of how disingenuous Respondent could be in his testimony was his claim that he simply made the statement out loud and that there were other officers in the vicinity whose firearms had been removed, as though they were somehow the subject of his comment. It is clear and obvious that the comment was addressed to and intended to

be heard by Margolis. Further, he spoke within earshot of a number of other members of the service who certainly heard it.

There is no question that if this statement was not some kind of veiled threat it was intended to demean and insult the lieutenant.

Consequently I find that Respondent was discourteous to Margolis. As to Respondent's defense that his conduct was somehow defensible, it is, as has been noted, without merit. This is a paramilitary organization where a Respondent must obey a lawful order. He could file a grievance or take any other legally appropriate action at a later time if he believed the order was the result of some form of discrimination or retaliation. Respondent is found Guilty of Specification No. 2.

One further note regarding this specification is in order. During the cross-examination of Callahan about this incident counsel for Respondent asked her if she had been having an "intimate relationship" with Margolis. The reason given for the relevance of this question was that it went to her credibility regarding the incident with Margolis. The "good faith basis" for this question was supplied, counsel said, by Respondent and one other officer. Callahan had only witnessed part of the incident and when Respondent testified later in the trial he said nothing that was substantially different from what Callahan had said. Thus there was no reason to have asked this type of question which, incidentally Callahan emphatically denied.

Disciplinary Case No. 2011-4170 contains two specifications which deal with two separate but related incidents. The first occurred on October 30, 2010, when Respondent was assigned to partner with Alexander and go on a patrol assignment known as SP-10.

The second specification deals with what occurred on January 30, 2011 at the adjudication of a command discipline arising from the first incident.¹¹

Specification No. 1 alleges that Respondent "did fail to comply with an order in that Sergeant Peter Mikulus informed him of his assignment and [Respondent] refused to report to his assignment."

There is no question that Mikulus assigned Respondent to SP 10 with Alexander as his partner. While there are minor differences about exactly when it happened and what preceded it Mikulus, Respondent and Alexander all agreed that happened. Respondent and Alexander testified that initially they were each given separate assignments at hospitals and that the assignment was changed to SP-10 just after roll call. Mikulus' recollection was that this was the initial assignment given to them at roll call. All in all this difference is meaningless as the assignment had clearly been given to both Alexander and Respondent by about 7:30 a.m. From this point several versions of what happened next emerged.

Respondent testified that after initially getting the assignment, he obtained a key for a patrol car and he even believed he remembered the number of that car. Then he went to Mikulus and told Mikulus that he did not work with Alexander and that Mikulus agreed to find him another partner. Respondent testified that he went to the 124 room for a while and then went back to Mikulus to see what was happening with his new partner. Mikulus, he said, told him he was working on it. Respondent said that he then went downstairs to the lounge. At some point an officer got him and sent him to the desk. Respondent noted that he initially thought that officer was Alexander but now realized he

¹¹ Neither specification as printed denotes a date, however the dates of the incidents are clearly established in testimony and the specifications were orally amended to reflect the date.

was wrong. In any event he went to the desk where Kipp told him he had to do SP-10 with Alexander and he complied.

Respondent said he obtained the keys to a patrol car and went outside. He discovered that Alexander was in another patrol car. That car, Respondent testified, was too small for him and so she returned the keys to that car and they went on patrol in the car he had obtained the keys to.

The Department's version came from Mikulus and Kipp. Mikulus denied ever agreeing to get Respondent a new partner. He said all the officers were paired up and that he had told Respondent to go on SP-10 patrol with Alexander an order that he never changed. According to Kipp at about 9:00 a.m. Alexander came to him at the desk to see where Respondent was. A search was done and Respondent was found downstairs in the lounge. He was told to see Kipp who told him to go on SP-10 patrol with Alexander. He made some kind of gesture with his hands and then went out, presumably this time on SP-10 patrol.

Yet a third version of events came from Respondent's witness Alexander. Alexander testified that after getting the SP-10 assignment she obtained the keys to a patrol car and went out to that car. She said she took the position as recorder as that is the role she always took when she worked with Respondent and waited for Respondent.

She said that after waiting a few minutes she went back in to look for Respondent. Among the places she said she looked was the locker room. She did not recall if she looked downstairs. She could not find him. She then went back to the patrol car and resumed waiting for Respondent.

After "two or three minutes, tops" she went back into the precinct and saw Respondent at the desk, without his gun belt and coat. She went back out to the car. Respondent came out with the keys to another patrol car opposite from her which he proceeded to check out as he normally did and then to sit in. They subsequently conferred and she returned the keys she had.

Respondent has therefore presented two conflicting version of the events. In Alexander's version there is a relatively short delay before they finally go on patrol whereas Respondent, while he did not give a precise amount of time, acknowledges that a significant time passed as he first waited in the 124 room, got impatient, went back to Mikulus then went down to the lounge where again he watched television and dozed off while waiting. There is an obvious reason for Alexander to understate the time that passed before they went on patrol because during that time she was also not on patrol and simply waiting in a car. Put another way she too sat for an hour and a half without going on patrol or taking any other action.

Because of her motive to be less than candid about the time period I find Alexander's testimony on that issue not to be credible.

Respondent's recollection of events is also subject to question. He volunteered in his own testimony that his recollection was that Alexander had come to the lounge to get him, which was incorrect. Then there is the matter of the keys and patrol cars. Counsel for Respondent made much of this issue during the trial particularly in the cross-examination of Kipp and Mikulus. Respondent also complained in his own testimony about an insufficient examination of this issue by McEvoy. Counsel for Respondent treated it as though it was the missing proof of Respondent's innocence.

Respondent had an opportunity to fully litigate the two keys for two patrol cars issue at this trial and it is clear that it has nothing to do with whether or not Respondent obeyed Mikulus' order to go on SP-10 patrol with Alexander, which is what the charge is about.

Neither Kipp nor Mikulus had any motive to be untruthful. After reviewing all of the testimony I find their version of events to be credible. There is thus no question that Respondent did not go to the assignment he was given. The issue that must then be explored is whether Respondent *refused* to go the SP-10 assignment with Alexander as his partner as is alleged in the specification.

There is ample evidence that Respondent did not want to be assigned to SP-10 patrol and that both he and Alexander considered it something for officers with less seniority than either of them. There is also testimony from Respondent that he no longer wanted to work with Alexander. So there is ample motive for Respondent to have wanted to avoid the assignment.

But there is a difference between a failure to do something and a refusal to do it. The dictionary defines to "refuse" as "to express oneself as unwilling to accept or to show or express unwillingness to do or comply." There is no testimony that Respondent verbally stated that he would not comply. Further it appears that when he was told by Kipp to go to the assignment he did so albeit with some kind of gesture of protest.

The fact that he had motive not to comply and failed to go to the assignment might be some circumstantial evidence of a refusal to go but it is insufficient to rule out the possibility that Respondent somehow misunderstood. In my experience people

sometimes hear what they what to hear rather than what was said. Whether that happened in this case or not, the Department has not met its burden of ruling it out.

It should be noted that the original command discipline on this issue did not charge a "refusal" but a "failure" to go to the SP-10 assignment with Alexander as his partner (see RX A).¹²

It would appear that there was misconduct for Respondent to have waited an hour and a half for a new assignment without checking with the desk officer. It would appear that there was misconduct by not signing the Interrupted Patrol Log so that it would be clear to the desk officer that he was not on patrol. It would appear that there was misconduct in his going to the lounge to watch television and doze off while on duty – but these things are not charged. Respondent is charged with *refusing* to go to his assignment and that has not been satisfactorily established. Respondent is found Not Guilty of Specification No. 1.

Specification No. 2 alleges that Respondent, "was discourteous to Deputy Inspector Charles McEvoy, to wit: said Police Officer called him by his first name and called him a racist."

Respondent admits that during a proceeding in McEvoy's office, where they were trying to adjudicate a command discipline with relation to the earlier incident he addressed McEvoy by his first name. He also admits that he told McEvoy that he was a racist. So there is no factual issue to address as Respondent admits to the conduct that he is charged with.

¹² Events that occurred during the adjudication of that command discipline is the subject of Specification No. 2.

He claims that somehow he was justified in addressing McEvoy by his first name because McEvoy addressed him by his first name.

This Court notes that it is not uncommon in this agency for individuals of superior rank to address those of lower rank by their first name while they are addressed by their subordinates by title. That is it would certainly be in keeping with protocol of this Department if Respondent were addressed as "Cliff" or "Clifford" by McEvoy while Respondent would address him by his rank, Deputy Inspector or more colloquially, "Inspector."

McEvoy said he did not recall Respondent requesting him not to call him by his first name. Mencaroni did not recall Respondent requesting McEvoy call him "Police Officer."

But even if Respondent were telling the truth and had requested that McEvoy refer to him as "Police Officer" and that McEvoy had persisted in calling him by his first name, Respondent would have been out place and disrespectful to address McEvoy by his first name, as he did. His avenue of protest to this alleged mistreatment did not lie in confronting McEvoy but in filing a complaint or a grievance or a lawsuit or whatever route he chose, other than direct disrespect to a ranking officer.

But the courtesy went even further. Respondent told McEvoy that he was a racist. During this trial Respondent asked for and was granted a great deal of latitude in his effort to establish justification for his actions.

Respondent offered not an iota of evidence to establish that he had any reason to believe that McEvoy was a racist. During his testimony he offered no explanation for the remark. In fact when he was asked about the "racist" remark on cross-examination he

added that he had also told McEvoy that morale was low.¹³ Obviously his intent was to be insulting and frankly Respondent offered no defense to this.

Respondent made abundantly clear that he was unhappy about the fact that he thought he was facing a loss of two hours but was told he would lose one day. The alleged change in penalty may explain Respondent's angry outburst but it does not make McEvoy a racist. The statement amounted to a serious and a completely unfounded allegation.

Even if Respondent had a basis for believing that his statement was accurate his comment would still have been discourteous. Respondent had a right to pursue any one of a number of appropriate avenues to redress whatever claim of racism he might have believed he had, including filing an EEO complaint, a grievance or a lawsuit. Being insulting and disrespectful to McEvoy was not an option. Respondent is found Guilty of Specification No.2.

During the course of this proceeding Respondent raised another issue which, for the sake of completeness bears some comment. Respondent claimed that he suffers from [REDACTED]. No evidence beyond Respondent's testimony was offered to establish this as a fact. It is worth noting in this regard that Respondent had a [REDACTED] which was prepared at his request placed into evidence (RX E). That report makes no mention of [REDACTED]

With the exception of his partner, Alexander, who said she was informed of the issue by Respondent, no evidence, beyond the most general of statements about what he

¹³ In his earlier testimony about this comment Respondent had said the morale was low since McEvoy had arrived in the precinct.

believed others knew was offered to establish that others in the command in fact knew he had this disorder. More specifically no cognizable evidence was offered to establish that those who dealt with him in these various incidents such as McEvoy, Margolis, Mikulus and Church, knew of his alleged disability.

No evidence was offered that Respondent ever requested or was granted any special accommodation by the Department or what that special accommodation would be. Most significantly no evidence was offered by Respondent as to how a special accommodation could have avoided any one of the incidents involved in this case or for that matter how [REDACTED] played any part in any of the incidents in this case.¹⁴

This is not to say that Respondent does not suffer from [REDACTED] but that the issue was not put forward in any meaningful way. One further note on this issue, Respondent testified that he takes [REDACTED] which is a medication that can be used for [REDACTED]

[REDACTED]¹⁵ Again the sole source of information about medication is in Respondent's testimony so we do not know why or how much was prescribed nor the period during which it was taken. However Respondent also testified that he has tried periodically to wean himself from his medication. Here is what Respondent said on this subject:

Yes, but sometimes I try to see if I can wean off the medication, but I go woo woo. I can stay focused for a period of time, but I move around. I can't stand still.

There is no reliable way of knowing if any of the incidents involved in this case occurred during a time when Respondent was experimenting with not taking his medication.

¹⁴ Indeed when Alexander was asked how she dealt with Respondent's [REDACTED] she said she dealt with him with the same respect she would deal with any partner.

¹⁵ See Wikipedia

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 22, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of multiple acts of courtesy to other members of the service including supervisors. Respondent's claims of discrimination are not a defense nor do they mitigate the conduct. Respondent had ample avenues for redress of any grievance he may have had. In the case of his entry into the roll call office he sought to get help from King who was apparently not available. Eventually he got in touch by telephone with Seegers who told him to wait. Respondent claims to have waited 15 or 20 minutes for Seegers before storming back into the roll call office in a rage yelling at Callahan and others in that office. However from Respondent's own testimony we know that Seegers was there, or arrived very soon after the incident began, because Respondent tells us that when he exited the room Seegers was among those present. Thus with a bit more patience that whole situation might have been averted. This provides good evidence that Respondent lacks the ability to control his emotions. On the other hand it should be noted he had no problem waiting approximately an hour and half in the lounge when that suited his needs.

Respondent has repeatedly displayed poor judgment. He complains loudly about others being discourteous to him but fails to see that he is discourteous to others. While this was apparent throughout this trial one particular example is worthy of mention and it

involves the disturbance in the roll call office. Callahan was five months pregnant at the time and there is testimony from Douglas that his verbal attack on her was personal, asking her if she knew who her "baby daddy" is. I find this testimony credible because it is in keeping with Respondent's belief that Callahan was having an affair with Margolis. Such a comment, of course, was gratuitous, personal and insulting.¹⁶

The Department has recommended a penalty of 30 suspension days, 20 vacation days and "cooperation with counseling."¹⁷ In listening to this case and observing Respondent over many days my concern is whether Respondent has sufficient insight into his behavior and control over his emotions to serve as a police officer.

I have previously referred to a report that Respondent placed in evidence which was prepared by a clinical psychologist, Calapai, who identified himself as a Police Surgeon and which is dated December 1, 2011 (RX E).¹⁸ In the report the author stated: "It is my professional opinion, within a reasonable degree of psychological certainty that [Respondent] will appropriately handle any challenging encounters with his supervisor and/or authority in the future."

Predicting future human behavior is, of course, fraught with danger, however my own observations, as I have stated, lead me to question the psychologist's conclusions. It is not that I am predicting that there will be a problem but that I have great concern that a problem could arise should Respondent experience a "challenging encounter" in the future.

¹⁶ There was another incident later that day which Respondent brought to the Court's attention when he complained that Callahan had called him an EDP (emotionally disturbed person). His response to her, according to his own testimony, was to tell her to stop sleeping with bosses.

¹⁷ No specific counseling was mentioned. It should be noted that "cooperation with counseling" is not an authorized penalty under the Administrative Code.

¹⁸ This report was entered into evidence over the Department's objection. The physiologist was privately retained by Respondent, was never offered as a witness and thus did not testify at this trial.

In reviewing the psychologist's report I note that he appears to base his findings on a total of seven meetings with Respondent. He did not meet with Callahan, Bryant or Douglas all of whom were alarmed and frightened by Respondent's outburst in the roll call office.

In coming to my conclusions I heard those three witnesses and others who encountered Respondent in the various situations that make up this trial. I also heard from Respondent. Respondent displayed a remarkable ability to underestimate his inappropriate activity, denying, for instance that he banged on the desk. Relying solely on Respondent's statements seems to be a shaky foundation for any conclusion. Further the report does not indicate that the psychologist conducted or relied on any objective psychological tests in formulating his opinion. Further undermining reliance on the psychologist's conclusion is the fact that he did not mention anything about medication that Respondent testified he was taking and which might well affect Respondent's behavior.¹⁹

It is hard to imagine that the intake interview or the therapy sessions the psychologist conducted were stressful so it is not clear what the basis there is for the psychologist's conclusion that Respondent "appears to be fully capable of modulating emotional and behavioral responses within stressful situations."

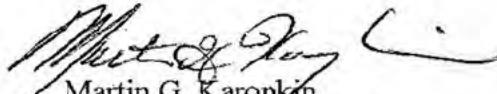
During the trial of this case I had to admonish Respondent on several occasions when he made verbal outbursts to testimony with which he disagreed. My experience therefore is that Respondent in fact does have difficulties modulating his emotions within stressful situations. In fairness it should be noted that he responded promptly and

¹⁹ Indeed the report specifically states that Respondent "has never required the use of...psychotropic medications..."

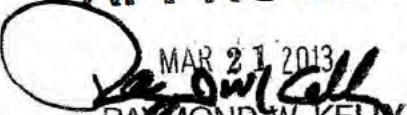
appropriately to my admonitions. What he would do in a situation less controlled than the courtroom is not clear.

Based on Respondent's conduct and his testimony a period of monitoring is not only appropriate but necessary as part of the penalty. Further given the seriousness of Respondent's offenses I recommend that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. In addition Respondent should forfeit thirty (30) suspension days to be served and twenty (20) vacation days.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner – Trials

APPROVED


MAR 21 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials

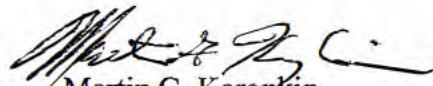
To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CLIFFORD RIGAUD
TAX REGISTRY NO. 931923
DISCIPLINARY CASE NOS. 2010-0509 & 2011-4170

In 2011, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 2.5 "Competent/Low" in 2010,²⁰ and 4.0 "Highly Competent" in 2008. He has received one medal for Excellent Police Duty.

In December 2010, Respondent was placed on Level I Discipline Monitoring. It was upgraded to Level II Monitoring in March 2011. Respondent has no prior formal disciplinary record.

For your consideration.



Martin G. Karopkin
Deputy Commissioner – Trials

²⁰ This evaluation was the subject of much testimony during the trial. It is in evidence along with the original evaluation done by McClinton-Young.